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**SEVENTH
ANNUAL REPORT
OF THE OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER**



1988



**SEVENTH
ANNUAL REPORT
OF THE OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER**

OFFICE OF THE PUBLIC
COMPLAINTS COMMISSIONER

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May 24, 1989

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Dear Mr. Attorney and Madam Solicitor General:

Pursuant to Section 3(7) and Section 3(8) of the
Metropolitan Toronto Police Force Complaints Act, 1984, I am pleased
to enclose herein the Seventh Annual Report of the Office of the
Public Complaints Commissioner.

Sincerely,

CLARE LEWIS
Public Complaints Commissioner

sp
encl.

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PART I

Overview of Complaints System Expansion of System

**PART I - OVERVIEW OF COMPLAINTS SYSTEM;
EXPANSION OF SYSTEM**

A. AN OVERVIEW

The Second Annual Report of the Office of the Public Complaints Commissioner, which covered the 1983 year, included a discussion of how the complaint process functions. The Third Annual Report explained the changes implemented by the new legislation, the Metropolitan Toronto Police Force Complaints Act, 1984, which became law on December 21, 1984.

A basic premise of the system is that the police force has the responsibility of performing initial investigation into complaints by members of the public. The vast majority of complaints are investigated initially by the police. The Act states that the Commissioner can take over an investigation on request of the Chief of Police, or when the Commissioner has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of the investigation, or at any time 30 days or more after the

complaint has been filed. The major part of the Commissioner's function, therefore, is not initial investigation but rather the monitoring of the police investigation into the complaint. The Commissioner also undertakes review and re-investigation of the complaint at the request of the complainant after the Chief of Police has reached a decision on the complaint.

The monitoring function is possible because the Commissioner gets a copy of all complaints as soon as they are filed, as well as a copy of all monthly investigative reports as they are completed. The Commissioner maintains ongoing communication with the Public Complaints Investigation Bureau of the Force in regard to general issues pertaining to investigation as well as with reference to particular files.

If the complainant requests a review, the Public Complaints Commissioner can re-investigate the matter, and must make a decision about the complaint on the basis of the available evidence. If the Commissioner agrees with the decision of the Chief of Police, a review report is written and sent to the complainant, the subject officer, and the Chief of Police. Whether the Commissioner agrees

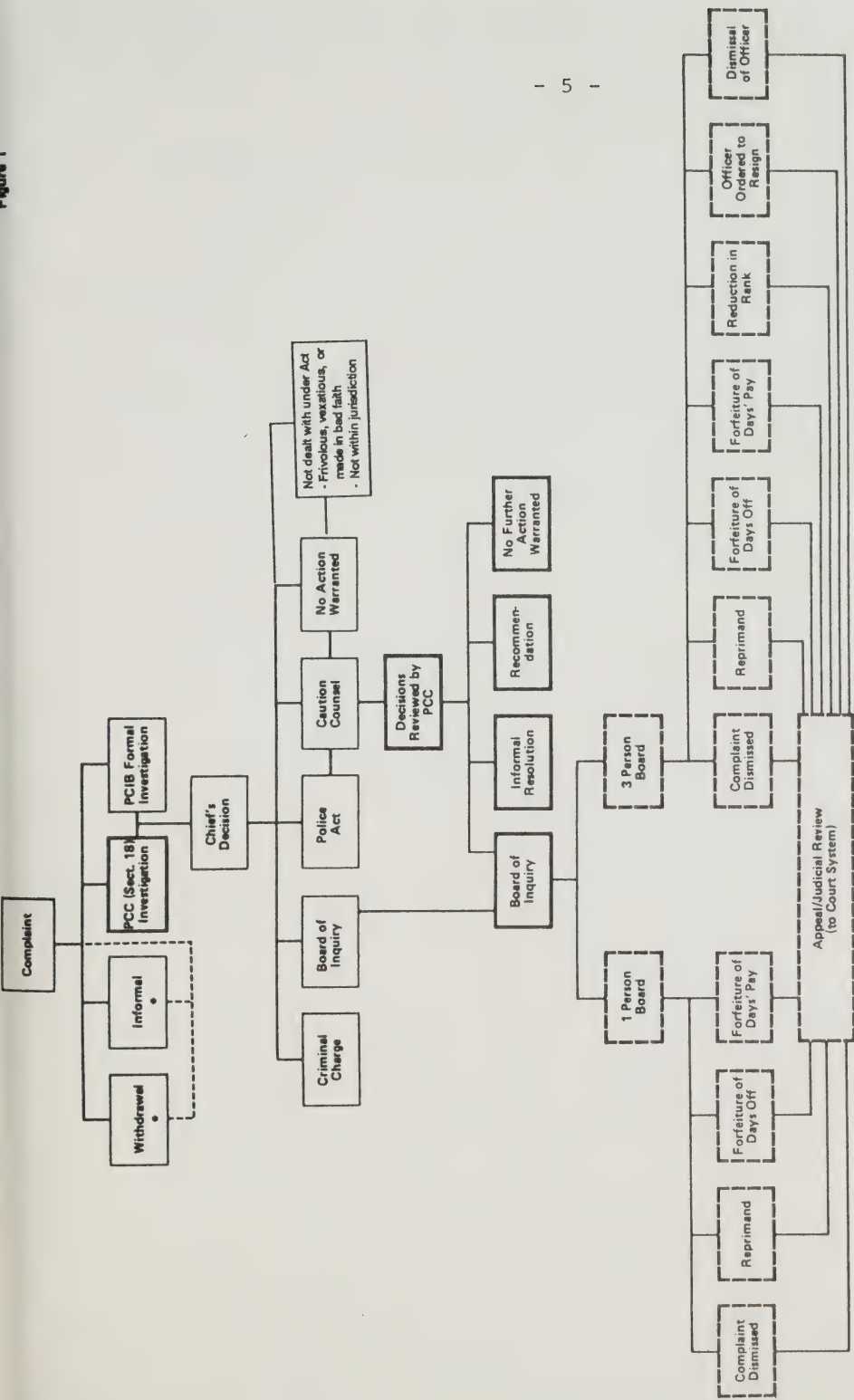
or disagrees with the Chief of Police, recommendations may be made aimed at preventing the problem encountered by the complainant from recurring. Finally, if the Commissioner believes it is required in the public interest, the case may be sent to a Board of Inquiry. The Commissioner has no further decision-making power in the case.

The Board of Inquiry tribunal consists of either one or three civilians depending on whether the complaint is minor or serious. The Board has the responsibility of holding a hearing, much like a court hearing, into the complaint. The officer is usually represented by counsel and the complainant may also be represented. A lawyer representing the Attorney General presents the case, witnesses are called, evidence is tendered, and arguments of law are made. The legislation provides that misconduct can be established only if proved beyond a reasonable doubt. At the end of the hearing, the Board decides whether the officer is guilty of misconduct. If the Board concludes that the officer is guilty of misconduct, it may discipline the officer. Penalties range from a reprimand to dismissal from the police force.

The chart in Figure 1 shows the possible stages of a complaint. These stages can be roughly divided into the

police investigation and resolution stage, the Public Complaints Commissioner review stage, and the Board of Inquiry stage.

Please note that in the interest of clarity, the chart illustrates only the most commonly occurring events in the complaint system.



— Area handled by Police

— Area handled by Public Complaints Commissioner

--- Area handled by Board of Inquiry

* When a complaint is withdrawn or informally resolved, the Commissioner reviews the file and, in certain circumstances, has the power to overturn the withdrawal or the informal resolution. In these cases, the complaint continues through the system.



B. EXPANSION OF THE SYSTEM

On November 4, 1987, the Attorney General of Ontario introduced legislation to permit the expansion of the Office of the Public Complaints Commissioner. An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984, which is currently Bill 4 before the Legislature, would allow any municipality in Ontario to choose to take advantage of the services of the Office of the Public Complaints Commissioner in respect of complaints against the local police force. Under the proposed legislation, local offices of the Public Complaints Commissioner would be established to service participating municipalities. The system would be identical to that in operation in Metropolitan Toronto with investigation in the first instance conducted by a specially designated unit of the local police force and decisions on appropriate action made by a designated senior officer of the police force. As with the Toronto system, the Public Complaints Commissioner would have both a monitoring function and a duty to conduct reviews upon request by any member of the public who is not satisfied with the resolution of his or her complaint by

the local police force. If, following a review, the Commissioner determined that the complaint should be heard by a Board of Inquiry, its members would be drawn from a panel established for the local area.

The legislation that would allow municipalities to choose this system has passed second reading in the Legislature and is before the Standing Committee on the Administration of Justice for consideration. The Committee will be receiving submissions from the public throughout the province. At the time of writing, the Committee has convened and received submissions in Thunder Bay, Ottawa and Windsor.

PART II
Research and Statistics

PART II - RESEARCH AND STATISTICS

A. INTRODUCTION

Since its inception, the Office of the Public Complaints Commissioner has routinely analysed data taken from all closed complaint files. This research activity permits the examination of the case-load from a statistical perspective, allowing trends to be identified over the years. Careful analysis and study of complaints can also lead to suggestions for improving policing generally and to specific recommendations for change. In addition, the research enables the Commissioner to evaluate the functioning of the complaints process.

In 1988 there were 594 cases closed by the Office of the Public Complaints Commissioner. A "case" involves a single complainant making one or more allegations based on a single incident or series of incidents. A case is closed when all outstanding issues with respect to the allegations have been resolved. Because cases vary in complexity, they vary in duration. Some cases may be resolved very quickly while others which require extensive investigation may last over a year.

During 1988 there were fewer cases closed than in previous years. The Metropolitan Toronto Police Force cited staff shortages at the Public Complaints Investigation Bureau as the cause of fewer police resolutions of complaints.

B. RESEARCH DATA

1. The Incident

Every complaint results from an incident in which a member of the public has some contact with the Metropolitan Toronto Police Force. The first incident may evolve into more than one contact in more than one location. The location of the primary incident is shown in Table 1. The locations are listed by frequency of occurrence, with the most common being listed first. As in previous years, the most common location of the primary incident was the street (49.9%). The next most common locations were private residences (15.3%) and police buildings (15.3%).

A single incident may give rise to several allegations. The listing of allegations is presented in Table 2. The majority of complainants (61.1%) made more than one allegation. In total, 1,229 allegations were made. For each case, details of only the six most serious allegations in each case were recorded.

TABLE 1

<u>Location of Incident</u>	<u>Number</u>	<u>Percent</u>
Street	296	49.9
Residence	91	15.3
Police Building	91	15.3
Public Place	84	14.1
Police Vehicle	26	4.4
Plaza/Mall	3	0.5
Schoolyard/Park	3	0.5
	<hr/>	<hr/>
TOTAL	594	100.0

The 1,229 allegations are presented in Table 2. There are two ways of examining the distribution of allegations. One way is by considering the total number of allegations. Thus, the 303 allegations of assault represent 24.7% of the 1,229 allegations that were documented. The other way is by considering the number of cases. Here the 303 allegations of assault represent 51.0% of the 594 cases. The percentage distributions are presented in Table 2 and Figure 2.

The 22 categories of allegations, grouped into four major areas, are presented in Table 2. The most common allegation is that officers failed to act according to proper police procedure (41.2%). This was followed by threatening or abusive behaviour (30.4%) and by physical assaults/excessive use of force (24.7%). Personal misuse of authority was cited in 3.7% of the allegations. It was noted that in 45 or 7.6% of the cases, there was an allegation of improper use of the baton. These allegations included physical assault or improper threatening use of the baton. In 21 or 3.5% of the cases, complainants alleged improper handling of police firearms.

The Commissioner, given the diverse ethnic and racial composition of Metropolitan Toronto, continues to be particularly concerned with any allegation of ethnic or racial bias by the police. In 25, or 4.2% of the complaints, there was some mention of a racial or ethnic statement being made. In a further 11, or 1.9% of the cases, a racial or ethnic statement was not alleged to have been made by the police, but the complainants stated that they perceived the treatment they received as racially or ethnically motivated.

In 8 or 1.4% of the cases there was some reference to a disparaging statement regarding homosexuality.

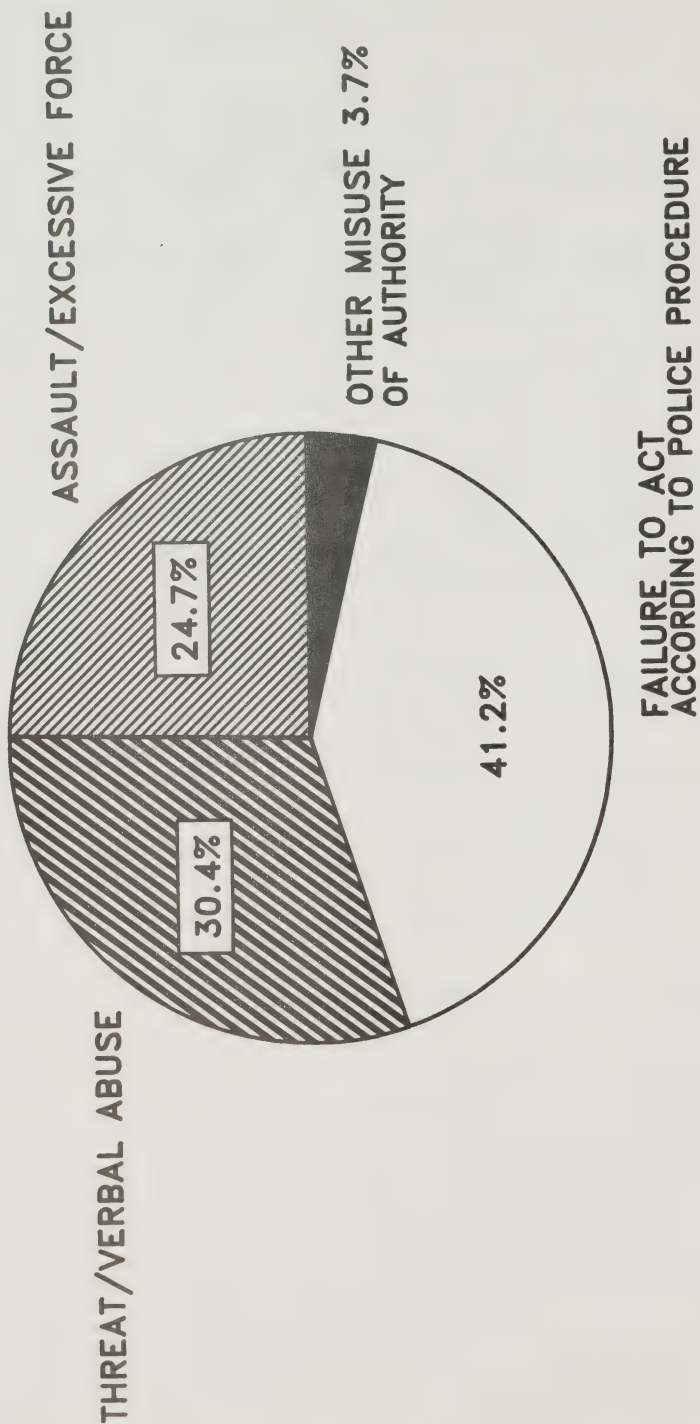
TABLE 2

TYPE OF ALLEGATION

(No. of Cases = 594)

<u>Physical Assault/Excessive Force</u>	<u>Number</u>	<u>% of Allegations</u>	<u>% of Cases</u>
Assault	88	7.2	14.8
Assault with Injury	173	14.1	29.1
Sexual Assault	1	0.1	0.2
Assault while Restrained	<u>41</u>	3.3	6.9
	303	(24.7)	
<u>Threat or Verbal Abuse</u>			
Incivility/Verbal Abuse	218	17.7	36.7
Harassment/Threat	134	10.9	22.6
Perceived Harassment/Threat	19	1.6	3.2
Verbal Sexual Harassment/Threat	<u>3</u>	0.2	0.5
	374	(30.4)	
<u>Failure to Act According to Police Procedure</u>			
General	164	13.4	27.6
Neglect of Duty	106	8.6	17.9
Damage/Mishandle Property	54	4.4	9.1
Failure to I.D. Self	47	3.8	7.9
Improper Arrest/Detention	30	2.4	5.1
Improper Search/Entry	50	4.1	8.4
Improper Charge	41	3.3	6.9
Improper Use of Discretion	<u>14</u>	1.2	2.4
	506	(41.2)	
<u>Other Misuse of Authority</u>			
Deceit	11	0.9	1.9
Breach of Confidence	4	0.3	0.7
Intoxication	8	0.7	1.4
Improper Driving	17	1.3	2.9
Theft/Corruption	1	0.1	0.2
Lying Under Oath	<u>5</u>	0.4	0.8
	46	(3.7)	
	<hr/>	<hr/>	
TOTAL	1,229	100.0	

Figure 2
TYPE OF ALLEGATION



In describing the allegations, the actual incident which led to the contact between the complainant and the police was noted. It must be remembered that this notation represents the first point of contact; others may have occurred as the situation evolved. The three most common points of contact were arrest (27.3%), traffic/accident investigation (24.4%), and criminal investigation (22.2%). The remaining incidents are listed in Table 3. In 238 or 40.1% of the cases, no charges were laid. The complainant was charged by the police in 348 or 58.6% of the cases. The details are presented in Table 4. In 97.7% of these cases, the charge was laid prior to the complaint being filed.

TABLE 3

<u>Precipitating Factor</u>	<u>Number</u>	<u>Percent</u>
At Arrest	162	27.3
Traffic/Accident Investigation	145	24.4
Criminal Investigation	132	22.2
Domestic Incident	36	6.1
Parking	27	4.6
By-Laws	15	2.5
Landlord/Tenant Issues	2	0.3
Request for I.D.	8	1.3
Other	14	2.4
None Apparent	<u>53</u>	<u>8.9</u>
TOTAL	594	100.0

TABLE 4

<u>Charge Against Complainant</u>	<u>Number</u>	<u>Percent</u>
Highway Traffic Act	163	28.3
Obstruct/Assault Police	69	12.0
Assault	68	11.8
Theft/Possession of Stolen Goods	42	7.3
Cause a Disturbance/Breach of Peace	26	4.5
Drug Offence	24	4.2
Alcohol Related Driving Offence	23	4.0
Property Offence	21	3.7
Break & Enter and Related Offences	21	3.7
Liquor Offence	15	2.6
Municipal By-Laws	13	2.3
Weapons Offence	12	2.1
Criminal Driving Offence	12	2.1
Public Order	11	1.9
Robbery/Serious Violence	11	1.9
Escape/Breach Probation	10	1.7
Public Mischief	3	0.5
Other	22	3.8
Unknown	<u>9</u>	<u>1.6</u>
TOTAL	575	100.0

There were 211 complainants (35.5%) who alleged some sort of physical injury occurring as a result of a confrontation with police. Of these, 70 (33.2%) alleged more than one injury. The details of these 281 alleged injuries are presented in Table 5. Of the alleged injuries, 57.3% involved cuts and bruises.

On the basis of the description in the allegations, medical reports and photographs, our researcher made a subjective evaluation of injuries. The criteria used by the researcher were as follows:

MINOR INJURIES: require little or no medical attention, such as scratches, minor headaches, etc.;

MODERATE INJURIES: have visible or identifiable signs, such as cuts, bruises, etc.; and

SERIOUS INJURIES: such as fractures, teeth injuries, cuts deep enough to require stitches.

TABLE 5

<u>Alleged Injuries to Complainant</u>	<u>Number</u>	<u>Percent</u>
Cuts/Bruises	161	57.3
Internal	49	17.4
From Handcuffs	54	19.2
Fractures	4	1.4
Teeth	8	2.9
Groin	4	1.4
Other	<u>1</u>	<u>0.4</u>
TOTAL	281	100.0

Of the 211 complainants who alleged injuries, 64 (30.3%) of the injuries were classified as minor, 76 (36.0%) were seen as being moderate, and 22 (10.4%) were serious. In 23.3% of the cases, there was insufficient information to determine the severity of injury. Of the complainants who claimed injuries, 111 (52.6%) sought medical attention or treatment of their injuries.

2. Characteristics of Complainants

In 81.3% of the cases, the complainants were male. Information as to age was given by 348 complainants. Of these, 105 (30.2%) were 25 years old or younger, 204 (58.6%) were in the 26 to 45 year age range. The remaining 39 complainants (11.2%) were over 45 years old.

3. Characteristics of Officers

Most allegations (90.7%) involved fewer than five officers. Specific data were collected on the first four officers listed in each complaint. The rank of these officers is shown in Table 6. Over two thirds (71.4%) of

the officers cited in the complaint were constables in the First Class category (usually, an officer must have served at least four years before gaining First Class status). Over 80% of the officers had five or more years experience on the police force (Table 7).

4. Police Division in which Complaint Arose

The police divisions in which the alleged incidents occurred are listed in Table 8. The largest number of complaints occurred in 52 Division (103, 17.3%). This division is responsible for the downtown core of Toronto. The next highest number of complaints (75, 12.6%) arose in 14 Division which is immediately west of 52 Division.

TABLE 6

Rank of Police Officer

	<u>No.</u>	<u>%</u>
Inspector or higher	5	0.5
Staff Sergeant	26	2.7
Sergeant	106	11.0
Constable 1	690	71.4
Constable 2	27	2.8
Constable 3	35	3.6
Constable 4	49	5.1
Not Specified	<u>29</u>	<u>2.9</u>
TOTAL	967	100.0

TABLE 7

<u>Years of Service</u>	<u>Number</u>	<u>Percent</u>	
Under 1 Year	32	3.3	
1 to 2	50	5.2	
3 to 4	45	4.7	
5 to 10	261	27.0	} 83.9
11 to 15	344	35.6	
16 to 20	118	12.2	
Over 20 Years	88	9.1	
Not Specified	<u>29</u>	<u>2.9</u>	
TOTAL	967	100.0	

TABLE 8

<u>Division of Occurrence</u>	<u>Number</u>	<u>Percent</u>
11	23	3.9
12	18	3.0
13	31	5.2
14	75	12.6
21	20	3.4
22	12	2.0
23	16	2.7
31	22	3.7
32	34	5.7
33	18	3.0
41	37	6.2
42	21	3.5
43	12	2.0
51	42	7.1
52	103	17.3
53	18	3.0
54	21	3.5
55	38	6.4
C.T.U.	8	1.4
E.T.U.	8	1.4
W.T.U.	1	0.2
Other	5	0.9
Unknown	<u>11</u>	<u>1.9</u>
TOTAL	594	100.0

5. Complaint Process Data

(a) Filing a Complaint

Members of the public can register a complaint about police actions at any police station, at the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force, or at the Office of the Public Complaints Commissioner at 157 Bloor Street West. Complaints were registered at the Office of the Public Complaints Commissioner in 41.8% of the cases, at a police station in 38.3% of the cases, and at the Public Complaints Investigation Bureau in 15.3% of the cases. The remainder of the complaints were initiated elsewhere and are presented in Table 9 (see also Figure 3). More than one third (37.9%) of the complaints were filed either the day of the alleged incident or on the next day. Most complaints (83.0%) were filed within a month of the occurrence (Table 10).

(b) Complaint Investigation

Most complaints are initially investigated by the Public Complaints Investigation Bureau of the Metropolitan

Toronto Police Force. That Bureau is headed by a Staff Inspector and staffed by Staff Sergeants and Sergeants who are charged solely with the responsibility of investigating public complaints. The Public Complaints Commissioner has a statutory duty to monitor this initial investigation. On occasion, the Commissioner may undertake the initial investigation of a complaint or take over an investigation begun by the Public Complaints Investigation Bureau.

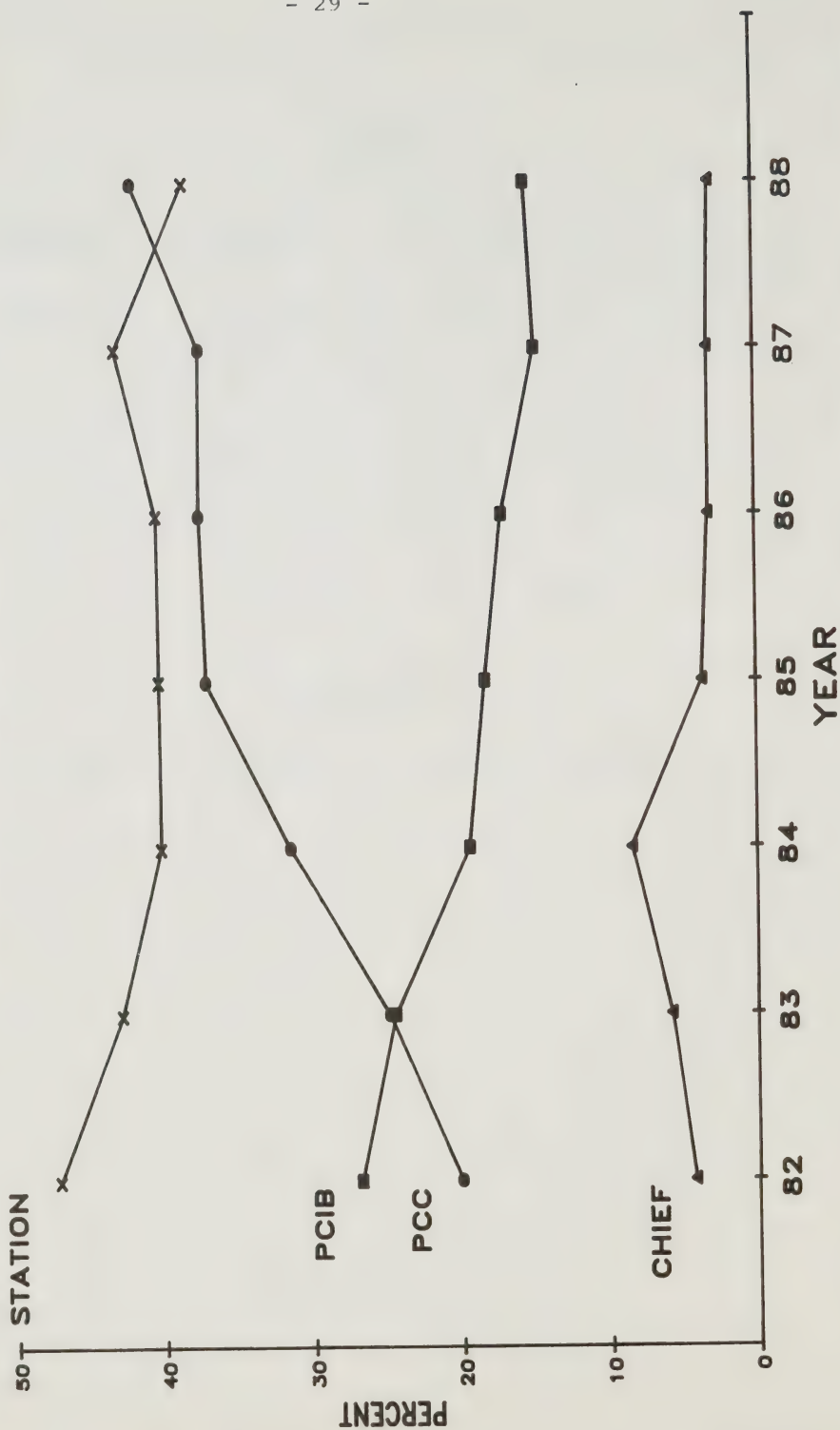
TABLE 9

<u>Location Complaint Filed</u>	<u>Number</u>	<u>Percent</u>
Office of the Public Complaints Commissioner	248	41.8
Police Station	228	38.3
P.C.I.B.	91	15.3
Chief of Police	17	2.9
Police Commission	7	1.2
Other	<u>3</u>	<u>0.5</u>
TOTAL	594	100.0

TABLE 10

<u>Days: Occurrence to Filing</u>	<u>Number</u>	<u>Percent</u>
Same Day	135	22.7
Next Day	90	15.2
2 - 31 Days	268	45.1
32 - 60 Days	33	5.6
61 - 90 Days	20	3.4
Over 90 Days	44	7.4
Unspecified	<u>4</u>	<u>0.6</u>
TOTAL	594	100.0

FIGURE 3
LOCATION WHERE COMPLAINT FILED
PERCENT DISTRIBUTION



ONLY MOST FREQUENT LOCATIONS PLOTTED

The civilian staff of the Office of the Public Complaints Commissioner can conduct the initial investigation of a complaint in three circumstances. They are: upon request by the Chief of Police; when there is unreasonable delay or other exceptional circumstances in the conduct of the investigation; or after receipt of the first interim report from the Public Complaints Investigation Bureau. The Office of the Public Complaints Commissioner carried out 20 initial investigations in 1988.

Whether an investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, the initial decision as to whether discipline is warranted is made by the Chief of Police after the investigation is completed.

(c) Informal Resolutions

In 21 cases, complaints were resolved informally. A complaint is properly resolved informally if both the complainant and subject officer(s) agree in writing to the resolution. The reasons given for the informal resolution are presented in Table 11. In 12 cases the informal

resolution was effected when the officer either admitted, apologized or explained his/her actions to the satisfaction of the complainant. In a further 6 cases the reason given was that the complainant was content to make the force aware of the incident.

In 3 cases, informal resolutions were coupled with disciplinary action. Officers were advised or spoken to by their superiors in 2 cases, and one case resulted in the officer being counselled.

(d) Withdrawals

In 200 cases, the complaints were withdrawn by the complainant. This amounted to 33.7% of all cases closed in 1988. Legal advice was cited by 43 complainants as the reason for withdrawing their complaints. Another 37 complainants who withdrew their complaints stated that it was their desire merely to call attention to the incident or put it on record rather than follow through with an investigation. Twenty three of these withdrawals were attributed to an admission of error on the part of the

complainant. The error was usually explained by the complainant having been intoxicated at the time of the incident so that a clear recollection of the events was impossible. In a further 19 cases, the reasons for withdrawal were not stated. Thirteen complainants reported personal reasons for withdrawing their complaints. Another 12 withdrew their complaints stating that all their concerns or allegations had been dealt with in court. The remaining 53 cases were withdrawn for miscellaneous reasons. The full list of reasons for withdrawals is presented in Table 12.

The fact that one third of all complainants in 1988 withdrew their complaints is of concern. This office will continue to monitor all withdrawals and make inquiries of complainants as to the reason for their withdrawals to ensure that such withdrawals are not the result of misunderstanding, threats or other improper pressure.

TABLE 11

<u>Analysis of Informal Resolutions</u>	<u>Number</u>	<u>Percent</u>
Officer admitted allegation, apologized or explained actions	12	57.1
Complainant content to make police force aware of complaint	6	28.6
Officer advised/spoken to by superiors	2	9.5
Officer counselled	1	4.8
	<hr/>	<hr/>
TOTAL	21	100.0

TABLE 12

<u>Reasons for Withdrawal</u>	<u>Number</u>	<u>Percent</u>
Legal advice	43	21.5
Complainant wanted to draw attention to incident	37	18.5
Complainant admits error	23	11.5
Personal reasons	13	6.5
Concerns dealt with in court	12	6.0
Other	53	26.5
Not stated	<u>19</u>	<u>9.5</u>
	<hr/>	<hr/>
TOTAL	200	100.0

(e) Decisions by the Chief of Police

In 373 complaints (62.8% of files closed in 1988) which were neither withdrawn nor informally resolved, investigation by either the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner was undertaken. Throughout the investigation, investigative reports are sent every 30 days to all interested parties including the complainant, the subject officer, and the Office of the Public Complaints Commissioner. Whether the investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, upon completion, the file is presented to the Chief of Police or his designate for a decision.

In most of these cases (92.7%), the Chief concluded that no further action was warranted. In 194 of these cases, the Chief stated that there was insufficient evidence to prove misconduct beyond a reasonable doubt. In 41 of these cases, the Chief noted that the officer acted according to police procedure. In 31 of these cases, the Chief concluded that the evidence supported the officer's version of events. In one case, the Chief offered an

apology but no further action was taken. In 85 (22.8%) of the 373 cases, the Chief concluded that the complaint would not be dealt with under the Act. In 63 of these cases, the Chief decided the complaints were frivolous, vexatious or made in bad faith. In the remaining 22 cases, the Chief decided the complaint was not within the jurisdiction of the Act.

In a total of 24 cases, some discipline of the accused officer(s) was imposed. Three of these cases involved informal resolution, whereas 21 were formal decisions made after full investigation. See Table 13 for a complete breakdown of discipline imposed by the Chief. Discipline choices available to the Chief of Police in these circumstances are as follows:

Officer Advised/Spoken To: Without making a judgment as to whether there is substance to the allegation, a superior officer informally discusses the case with the subject officer and suggests better ways of dealing with the situation.

Counsel: A superior officer acknowledges that there is substance to the allegation, but that the conduct was judged to be unintentional or resulted from inexperience. A counsel is recorded on the police officer's file at headquarters.

Caution: As above for Counsel. In addition, the officer is warned that further misconduct will result in charges pursuant to the Police Act.

Charge Under Police Act: The Chief of Police may charge the officer under the Police Act. In these cases, an internal disciplinary tribunal is convened. Misconduct must be proved beyond a reasonable doubt. Employment penalties can be imposed.

Board of Inquiry: The Chief of Police may refer the case to a public hearing before a civilian board of inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984. Misconduct must be proved beyond a reasonable doubt and employment penalties can be imposed.

Charge Under Criminal Code: The Chief of Police may cause the subject officers to be charged under the Criminal Code.

TABLE 13

Discipline Taken Against Police Officers

Nature of Resolution

<u>Action</u>	<u>Informal</u>	<u>Formal</u>	<u>Total</u>
Officer Spoken to/Advised	2	2	4
Counsel	1	9	10
Caution	-	1	1
Counsel and Caution	-	3	3
Police Act Charge	-	3	3
Referred to Board	-	1	1
Criminal Charge	-	<u>2</u>	<u>2</u>
TOTAL	3	21	24

Of the 21 cases in which discipline was imposed after full investigation, the Chief counselled the officer in 9 cases, cautioned the officer in one case, and cautioned and counselled in 3 cases. In 2 cases the officer was advised or spoken to. In one case the Chief of Police called a Board of Inquiry. Pursuant to the Chief's decision to charge officers under the Police Act, 3 disciplinary trials were completed in 1988. In one case the charge against the officer was dismissed. In one case the hearing was withdrawn and the unit commander imposed forfeiture of 8 hours off. The third case resulted in the officer being forced to resign or be dismissed.

In all, 12 criminal charges against police officers were disposed of in 1988. Two charges were laid by the Chief of Police and 10 by complainants. In 8 cases the charges were dismissed, in 3 cases the charges were withdrawn, and in one case the officer was found guilty.

(f) Summary of Disposition of Complaints

Of the 594 complaints resolved in 1988, the following dispositions took place:

WITHDRAWALS - 200

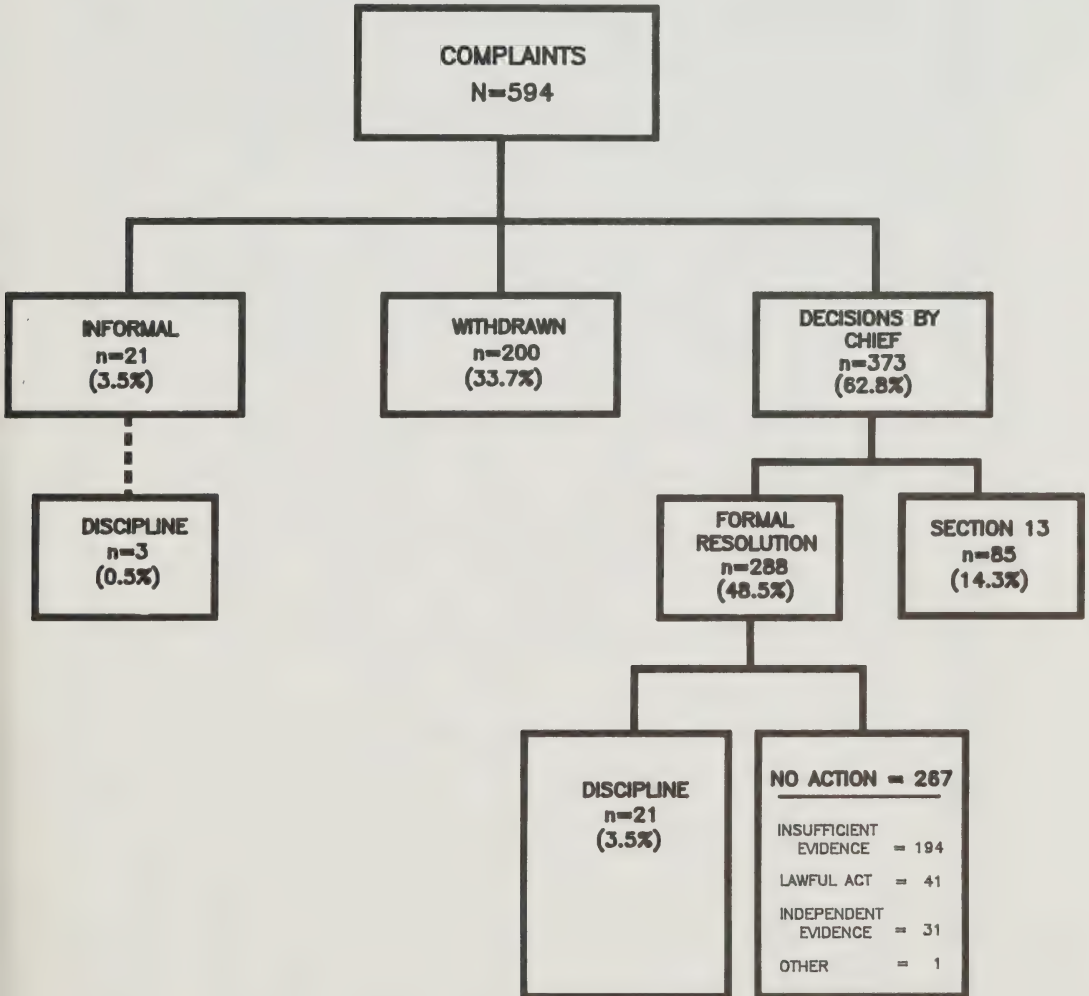
INFORMAL RESOLUTIONS - 21

DECISIONS BY CHIEF - 373

(See Figure 4).

An analysis was made comparing the type of allegation with the nature of the complaint resolution (Table 14). The major difference found was that the complaints which were resolved informally were less likely to involve an allegation of assault. There were no other noteworthy differences.

FIGURE 4
INITIAL DISPOSITION OF COMPLAINTS



Note: The percentages are relative to the
TOTAL number of complaints

Table 14
COMPLAINT RESOLUTION BY TYPE OF ALLEGATION

ALLEGATION	INFORMAL		WITHDRAWN		FORMAL		SECTION 13		TOTAL	
	n	%	n	%	n	%	n	%	n	%
Assault/ Excessive force Threat, Verbal Abuse Failure to act according to police procedure Other Misuse of Authority	4	12.5	127	33.4	143	21.6	29	18.7	303	24.7
	12	37.5	105	27.6	223	33.7	34	21.9	374	30.4
	14	43.8	136	35.8	270	40.8	86	55.5	506	41.2
	2	6.3	12	3.2	26	3.9	6	3.9	46	3.7
TOTAL NUMBER OF ALLEGATIONS	32	100.1	380	100.0	662	100.0	155	100.0	1,229	100.0
AVERAGE ALLEGATIONS PER COMPLAINT	1.5		1.9		2.3		1.8		2.1	

6. Reviews by the Public Complaints Commissioner

If the complainant is dissatisfied with the decision of the Chief of Police, including a decision that the complaint is frivolous or not within the jurisdiction of the Act, he or she has a right to request a review by the Office of the Public Complaints Commissioner. The Commissioner, however, has no jurisdiction under the legislation to initiate a review. Of the 85 cases in which the Chief decided the complaint was frivolous, vexatious or the complaint was not within the jurisdiction of the Act, 24 complainants requested a review of that decision. In all but 2 of these cases the Commissioner found that, although the evidence may have been insufficient to take disciplinary action, the allegations nonetheless fell within the jurisdiction of the Act.

In 1988, 122 reviews requested by complainants were completed. In 93 cases in which a review was completed, the Commissioner agreed in full or in part with the decision of the Chief. In 8 cases, the Commissioner decided that it was not in the public interest to order a hearing into the complaint. In 13 cases, the person who

had requested a review withdrew the complaint before the review was completed. In 6 cases, the Commissioner arranged an informal resolution of the complaint. The remaining 2 cases resulted in Boards of Inquiry being completed. In all, 6 Boards of Inquiry were called in 1988 and one officer appealed a Police Act decision. (A section on Boards of Inquiry is included further on in this Report).

7. Length of Time Taken to Resolve Complaints

A record was kept of the time it took to resolve each complaint.

The number of days between the time the complaint was filed and a decision by the Chief of Police averaged 190.3. A representation of the number of days between filing and the final investigative report is presented in Table 15.

The number of days between a request for review by the complainant and a decision by the Public Complaints Commissioner averaged 171.5. Table 16 sets out these figures.

TABLE 15

<u>Number of Days From Filing to Final Report</u>	<u>Number</u>	<u>Percent</u>
1 - 30 Days	71	12.0
31 - 60 Days	61	10.3
61 - 90 Days	63	10.6
91 - 120 Days	77	13.0
121 - 150 Days	53	8.9
151 - 180 Days	47	7.9
181 - 270 Days	86	14.5
271 - 360 Days	30	5.0
Over 360 Days	30	5.0
Not Specified	<u>76</u>	<u>12.8</u>
TOTAL	594	100.0

TABLE 16

<u>Number of Days From Review Request to P.C.C. Decision</u>	<u>Number</u>	<u>Percent</u>
1 - 30 Days	2	1.6
31 - 60 Days	11	9.0
61 - 90 Days	17	13.9
91 - 120 Days	19	15.6
121 - 150 Days	13	10.7
151 - 180 Days	11	9.0
181 - 270 Days	26	21.3
271 - 360 Days	15	12.3
Over 360 Days	<u>8</u>	<u>6.6</u>
TOTAL	122	100.0

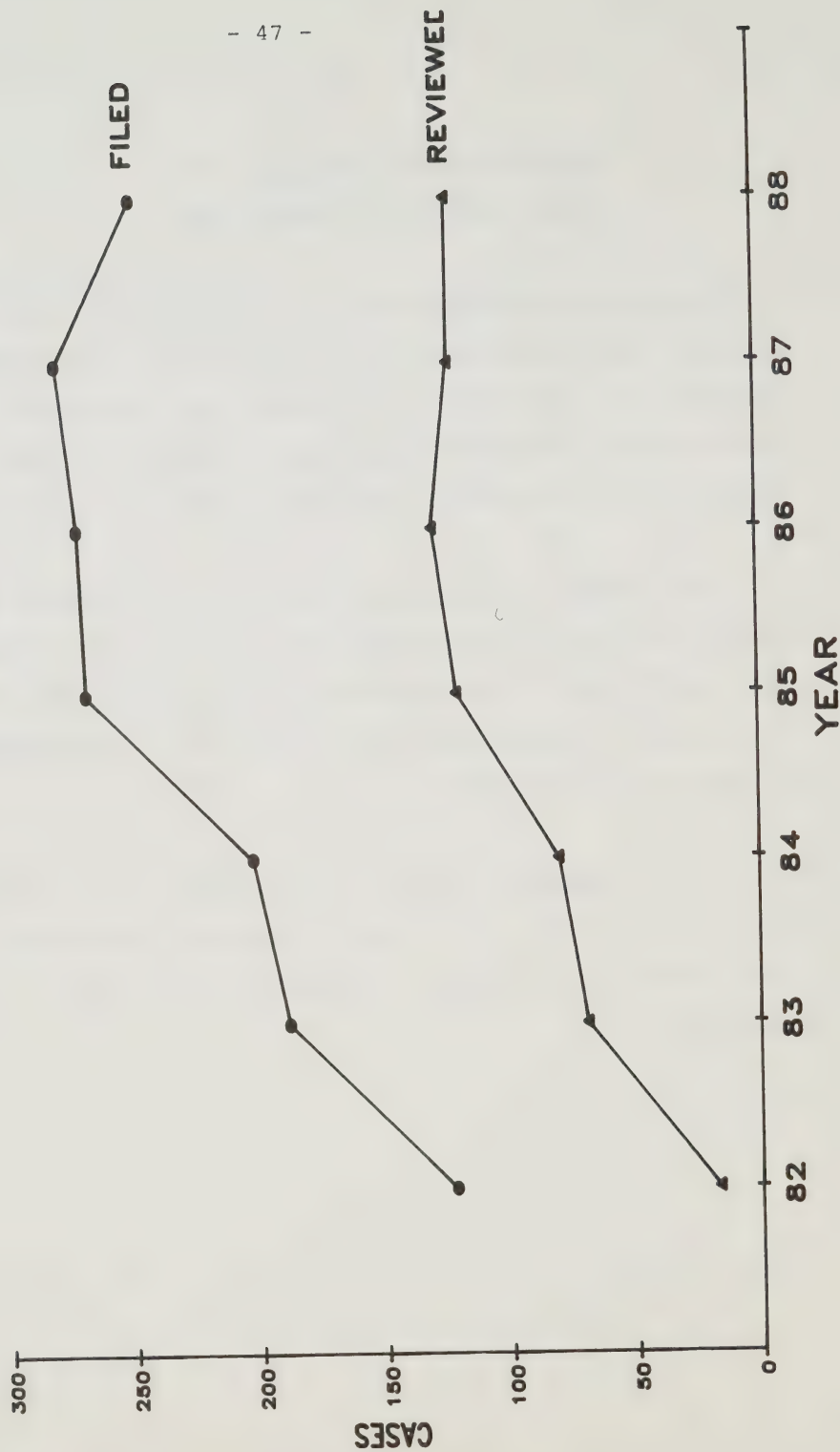
8. Work-load of the Office of the
 Public Complaints Commissioner

Data has been collected on the operations of the Office of the Public Complaints Commissioner since 1982. There are two major points of contact with the public. The first is upon receipt of the original complaint. The second is the reviewing of the police decision.

The number of complaints filed at the Office of the Public Complaints Commissioner has risen from 20% in 1982 to 41.8% in 1988. This increase is presented graphically in Figure 5. Requests for reviews have increased from 17 in 1982 to 122 in 1988.

As is apparent from the above figures, public demand for the services of the Office of the Public Complaints Commissioner has increased substantially since its inception.

FIGURE 5
WORKLOAD INDICATORS
PUBLIC COMPLAINTS COMMISSIONER



C. OTHER CONTACTS WITH THE OFFICE OF THE PUBLIC COMPLAINTS COMMISSIONER

During 1988, in addition to the complaints filed at the Office, there were 619 recorded contacts made with the Office of the Public Complaints Commissioner concerning inquiries which, although they did not develop into complaints, took a substantial amount of time to resolve.

Of these 619 contacts, 83.9% were made by telephone, 10.0% were made by letter, while 6.1% were personal appearances.

Of the 619 people who made inquiries of the Public Complaints Commissioner's Office during this period, 45 or 7.3% were referred by, among others, government agencies, lawyers, or city councillors.

In 60.4% of these contacts, people inquired about specific incidents and wished to know whether or not their complaint fell within the jurisdiction of the Office of the Public Complaints Commissioner. 7.4% of the contacts were requests for information about either the Office or the procedures set out in the legislation.

Another 15.1% made general complaints regarding the police or the justice system, 6.5% requested information about non-police matters, while 10.6% requested general information about the police without having a specific complaint. The majority of these contacts involved some form of follow-up activity; 129 additional telephone calls were made by investigators to aid in the resolution of these inquiries. Further, 60 letters were written for the same purpose and 38 interviews were conducted. In 43 cases, a subsequent follow-up appointment was made.

Aside from these contacts, a great many inquiries were made by people who wanted to lodge a complaint about a police officer on a police force other than the Metropolitan Toronto Police Force. These complaints are not within the jurisdiction of the Office of the Public Complaints Commissioner and were referred to the proper agencies.

Citizens were also referred to the Metropolitan Toronto Police Force, the Law Society of Upper Canada, the Municipal Police Authorities, Chiefs of Police in other jurisdictions, the Ministry of the Attorney General, other ministries and the Office of the Ombudsman.

PART III
Other Significant Activities

PART III - OTHER SIGNIFICANT ACTIVITIES

A. EDUCATION AND OUTREACH - POLICE AND PUBLIC

In 1988, the Public Complaints Commissioner continued regular appearances at the C.O. Bick Police College, for training sessions on the complaints legislation and its implications both for constables and for supervisory police officers. The Commissioner found these education sessions particularly useful in that they allowed for informal dialogue with members of all ranks of the police force. Since taking office in October 1985, the Commissioner has attended the C.O. Bick College for this purpose on 41 occasions.

Public education activities and consultations with the public continued throughout the year. Through meetings with individuals, community groups and social service agencies, the Office of the Public Complaints Commissioner undertook to improve public awareness of the Commissioner's role.

B. ON-GOING CONSULTATION WITH THE POLICE FORCE AND
THE BOARD OF COMMISSIONERS OF POLICE

Complaints against the police by members of the public are of concern to police management at all levels. The Commissioner and his staff maintain on-going discussions with the Chief of Police, senior staff of the police force, the head of the Public Complaints Investigation Bureau, as well as members of the Board of Commissioners of Police. 6

An example of informal interaction between the Metropolitan Toronto police and the Office of the Public Complaints Commissioner is set out below.

In anticipation of the large number and variety of activities planned during the Economic Summit in June 1988, Metropolitan Toronto police management approached the Public Complaints Commissioner and requested his co-operation with respect to the processing of public complaints. As a result of this request, the Public Complaints Commissioner extended regular office hours to cover the three evenings of the Economic Summit.

C. RECOMMENDATIONS TO THE METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE

The Metropolitan Toronto Police Force Complaints Act, 1984, gives the Commissioner the power to make formal recommendations aimed at preventing situations which have given rise to complaints. Section 21 of the Act provides that the Commissioner may make recommendations to the Metropolitan Toronto Board of Commissioners of Police when the Commissioner is of the opinion that a police practice or procedure, or law affecting the resolution or prevention of complaints, should be altered or implemented. Because of the flexible nature of the Act it is often possible to achieve the goals envisioned in this section co-operatively with the police without formal recourse to the legislation. Examples of this co-operation are set out below.

1. The Public Complaints Commissioner was approached by a citizen who was concerned about the incorrect and misleading wording of a Metropolitan Toronto Police Force explanatory notice which is mailed along with subpoenas to witnesses. Representatives of the Public Complaints Commissioner met with members of the Operational Planning

Section of the Metropolitan Toronto Police Force and, as a result, the notice form was amended to rectify the error.

2. In response to a complaint concerning police policy and procedure during the investigation of motor vehicle accidents and subsequent court procedures, members of the Office of the Public Complaints Commissioner met with representatives of the Operational Planning Section of the Metropolitan Toronto Police Force.

This meeting included discussion of police procedures and practices relating to: the collection of all relevant information (including all witness statements) in police memo books; accident forms; and the communication of all information and evidence collected by the police regardless of which party it favours to the Crown Attorney for disposition.

The police have reviewed their policies and procedures relating to these issues and are currently in the process of instituting substantial changes.

3. The Metropolitan Toronto Police use of the A.L.E.R.T. screening device at accident scenes was raised in another complaint. The current procedure directs police officers not to use this screening device in an accident scene investigation. The necessity and appropriateness of such a prohibition was raised in discussions between representatives of the police force, the Crown Attorney's Office and the Office of the Public Complaints Commissioner. Further discussions regarding possible amendments to this procedure are ongoing.

D. LIAISON WITH THE ONTARIO PROVINCIAL POLICE

Section 18 of the Act provides that the Chief of Police may request the Commissioner to conduct the initial investigation of a complaint.

The Chief made such a request on three occasions in 1988 in circumstances in which it was essential that the investigation be clearly seen to be independent and separate from his Force.

In each case the Office of the Public Complaints Commissioner completed investigations and forwarded the result to the Chief for a decision.

Following such a decision, the complainant can request that the Public Complaints Commissioner review the matter in the normal manner.

In one case, as has happened in previous years, concurrent with his request that the Office of the Public Complaints Commissioner conduct the initial investigation, the Chief also referred the matter to the Ontario Provincial Police for criminal investigation. In these instances, with the co-operation of the provincial force, the Office of the Public Complaints Commissioner monitors the Ontario Provincial Police investigation and includes the Ontario Provincial Police file with the investigative report it sends to the Chief for his decision.

E. PARTICIPATION IN POLICE/COMMUNITY DIALOGUE

Part of the mandate of the Office of the Public Complaints Commissioner is to try to prevent, or avoid the escalation of, situations of misunderstanding or hostility between the police and the community. In furtherance of this objective, the Public Complaints Commissioner's staff have been involved with a variety of groups created to deal with issues currently confronting the Metropolitan Toronto

Police Force and the communities of Toronto and surrounding areas. The examples below represent the involvement of the Office of the Public Complaints Commissioner in issues which affect local neighbourhoods, Metropolitan Toronto as a whole, and adjoining regions.

1. Council on Race Relations and Policing

The Council on Race Relations and Policing is a partnership between the Metropolitan Toronto Police Force and representatives of institutions, community agencies and individuals with an interest in issues pertaining to race relations and policing. The organization was originally established in 1976 and its mandate includes bringing the above-noted groups and individuals together to discuss issues of mutual concern. It also aims to provide advisory assistance to other committees on race relations and policing by developing programs and strategies for joint problem-solving with the police force, developing public education programs and documenting and analyzing trends and experiences in the police/race relations field. The Office of the Public Complaints Commissioner has been represented on the Council since 1982 and is an active participant in subcommittee work.

During 1988, police challenges to the Metropolitan Toronto Police Force Complaints Act, 1984 became a matter of concern for various community groups and citizens. In response, the Council invited the President of the Metropolitan Toronto Police Association, the Public Complaints Commissioner, the Chief of Police (Metropolitan Toronto) and the Chair of the Metropolitan Toronto Board of Commissioners of Police to present their views and recommendations regarding the complaints legislation. Following these presentations, the Council appointed a subcommittee which prepared a submission to the Attorney General in October 1988, regarding the legislation.

The Office of the Public Complaints Commissioner continues to participate in the Council's Advisory Subcommittee on Police Training. The mandate of the subcommittee includes: serving as an information-sharing forum for institutions and organizations assisting the Police College; cooperatively developing educational materials with an emphasis on cross-cultural, race relations and human rights issues; providing feedback on the Force's proposed training plans and materials; and serving as a vehicle for monitoring and evaluating the impact of training activities.

The Subcommittee will continue its efforts to assist the Force in implementing the goals, objectives and strategies set out in the Draft Report on Cross-Cultural and Race Relations Training which was endorsed by the Chief of Police and the Metropolitan Toronto Board of Commissioners of Police in January, 1988.

2. The Greater Toronto Region Working Group on Policing in Multicultural, Multiracial Urban Communities

The Greater Toronto Region Working Group (the Working Group) was formed in 1984 to address policing issues arising out of the increasing plurality of our society. The Working Group is composed of representatives from the police forces of Hamilton-Wentworth, Durham Region, Halton Region, Metropolitan Toronto, Peel Region and York Region, as well as the Ontario Provincial Police, the Royal Canadian Mounted Police, representatives of various committees and levels of government and individuals with expertise in the areas of race and ethnic relations and cross-cultural communication. The purpose of the Working Group is to develop detailed plans of action by which police and the community can achieve more representative police forces, enhance cross-cultural training for police

officers, improve citizen complaint procedures, and improve and coordinate police/community liaison activities. The Office of the Public Complaints Commissioner has been represented on the Working Group since its inception.

During 1988, the Working Group completed and published its Guidelines for Police/Minority Community Relations and Liaison, which was presented to the Attorney General and to the Solicitor General of Ontario. The Report has been widely distributed to community groups and to police forces.

The Working Group's Intercultural and Race Relations Training Project subcommittee began its work in the latter part of 1988. The subcommittee anticipates producing its Report and Guidelines in 1989.

3. Toronto Mayor's Committee on Community and Race Relations Subcommittee on Policing

The Toronto Mayor's Committee on Community and Race Relations was established in 1981 by the Council of the City of Toronto to promote understanding and respect among racial, cultural, ethnic and religious groups in Toronto.

In August, 1988 the Committee revived its policing subcommittee in order to address deteriorating relations between the police and Toronto's visible minorities.

A member of the Public Complaints Commissioner's staff is participating in this group's efforts as a resource person.

4. Intergovernmental Race Relations Network

The Intergovernmental Race Relations Network, which was established in June of 1988, is a committee composed of race relations professionals which meets on a regular basis to share information and to develop appropriate strategies and procedures to address emerging race related issues.

A member of the Public Complaints Commissioner's staff participates in the activities of this group.

F. THE RACE RELATIONS AND POLICING TASK FORCE

In December of 1988, Solicitor General Joan Smith announced the establishment of a Task Force "to address promptly the very serious concerns of visible minorities respecting the interaction of the police community with their own."

The Public Complaints Commissioner was named as Chair of the Task Force. The remaining five Task Force members, representative of both the police community and the visible minority population in Ontario, were:

Dr. Ralph Agard, President of the Children's Aid Society of Metropolitan Toronto and Executive Director of Harambee Services Canada Ltd.

Kamala-Jean Gopie, Consultant: Equity in the Curriculum for the North York Board of Education and President of the Urban Alliance on Race Relations.

James Harding, Chief of the Halton Regional Police Force and President of the Ontario Association of Chiefs of Police.

T. Sher Singh, Barrister and immediate past Chair of the Council on Race Relations and Policing.

Roy Williams, President of the Jamaican Canadian Association and member of the Metropolitan Toronto Board of Commissioners of Police.

The mandate of the Task Force was to inquire into and report on various aspects of police interaction with the visible minority community, including: the training police officers receive with respect to both visible minorities and the use of force; police hiring and promotional practices; police/visible minority community liaison mechanisms; and the feasibility of establishing a monitoring system to regularly review the interaction between these two groups.

The Task Force, which set up headquarters in the offices of the Public Complaints Commissioner, sought detailed information from Ontario's 121 police forces by means of a questionnaire on issues of relevance. The response was outstanding: 99 questionnaires were completed and returned. An added 127 written submissions were received from police forces, community organizations, associations and individuals. The Task Force also held public hearings in Toronto, Ottawa, Windsor and Thunder Bay at which 110 presenters made oral submissions.

The Task Force Report was delivered to the Solicitor General and released to the public on April 11, 1989.

G. THE INTERNATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT
OF LAW ENFORCEMENT (IACOLE)

The International Association for Civilian Oversight of Law Enforcement, of which the Public Complaints Commissioner is President, was established in 1985. It provides an international exchange forum for those who work directly in civilian oversight of law enforcement or who are interested in the subject. The intent of the exchange is to encourage and strengthen government agencies charged with the responsibility of examining and commenting upon citizen complaints of police misconduct.

An arena for discussion and debate has been international conferences which have been attended by civilian oversight practitioners, police executives, elected government representatives, police association officials, government administrators, civil rights/civil liberties advocates, lawyers and criminal justice educators from around the world. Representatives of civilian oversight agencies from Australia, Bermuda, Canada, England, Ireland, the Netherlands, Nigeria, Northern Ireland, Sweden and the United States of America have attended IACOLE conferences.

IACOLE has created a Clearinghouse of published materials about civilian oversight of law enforcement. A catalogue separates the materials into general categories and lists each publication with the title, author, publisher, a brief synopsis and where the publication can be obtained. The Association has printed the proceedings of its conferences and a booklet of selected conference speeches which are available through the Clearinghouse.

A Newsletter, which periodically publishes and highlights IACOLE activities, is a means of communication for civilian oversight agencies and reports on recent developments in the field, such as the establishment of a new oversight agency or changes in established agencies.

Membership in the Association is divided into two categories: members and associate members. Members are defined as "persons who are not sworn law enforcement officers and who work for or constitute agencies which are established by legislative authority to investigate and/or review complaints against law enforcement." Members are eligible to vote at Association meetings and to serve as

officers. Associate Members are defined as "persons interested in the oversight of law enforcement." Associate members are permitted to participate in all Association activities except voting or serving as officers.

The Public Complaints Commissioner has served on the Board of Directors of IACOLE as a member at large and Vice President since 1985. In 1987 he was appointed President, an office he currently holds. In that capacity he presided over the Association's Fourth Annual Conference in Montreal in September, 1988 at which the theme was "Civil Liberties". Participants spoke on subjects such as the effects of civilian oversight on police; citizen and community concerns about police accountability; and who should properly investigate police complaints.

The Commissioner is currently involved in organizing the Fifth Annual Conference to be held in Oakland, California in September, 1989.

PART IV
Boards of Inquiry

PART IV - BOARDS OF INQUIRY AND
JUDICIAL REVIEW

A. INTRODUCTION

Both the Public Complaints Commissioner and the Chief of Police can decide to send a complaint to a Board of Inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984, [s. 19(3), s. 14(1)(b)] if they consider that the public interest warrants such a hearing. In addition, any police officer who wishes to appeal from an adverse decision of an internal police disciplinary tribunal arising from a public complaint can appeal to a Board of Inquiry under the complaints legislation.

The individuals who form Boards of Inquiry to hear and decide upon complaints are selected from a panel appointed by the Lieutenant Governor in Council. One-third of the members of this panel are recommended for appointment jointly by the Attorney General and the Solicitor General; one-third of the members are recommended for appointment by Metro Council; and the remaining one-third are recommended jointly by the Metropolitan

Toronto Board of Commissioners of Police and the Metropolitan Toronto Police Association. The Attorney General/Solicitor General appointees must be members of the Law Society of Upper Canada. These lawyers chair each Board hearing.

A Board of Inquiry in respect of an allegation of serious misconduct is heard by three people, one from each group of appointees. A Board of Inquiry involving an allegation of minor misconduct is heard by one person, an appointee of the Solicitor General and Attorney General. The standard of proof in these proceedings requires that an allegation be proved beyond a reasonable doubt for there to be a finding of misconduct. Hearings are held in public and are procedurally similar to other administrative or quasi-judicial proceedings. The Statutory Powers Procedure Act and the rules of natural justice apply. There are additional provisions in the complaints legislation protecting the rights of police officers.

Between January 1, 1988 and December 31, 1988 a total of 6 complaints were referred to a Board of Inquiry. Within the reporting period, one hearing was informally resolved, and the remaining 5 were given hearing dates in

1989. One appeal from a Police Act disciplinary hearing was referred to a Board and will be heard in 1989.

Two Board of Inquiry decisions were delivered during 1988 as a result of Boards called in 1987. The Divisional Court heard two appeals from Board decisions, one application for judicial review and two procedural motions. As well, the Court of Appeal disposed of one appeal from a Divisional Court finding.

B. BOARD OF INQUIRY DECISIONS

1. Re: Federer and P.C. Stephens
December 14 and 15, 1987
Chair: Mr. W. Neils Ortved
Hearing ordered by Chief of Police

Chair Ortved found the complaint against P.C. Stephens to be unsubstantiated. The substance of the complaint was that the officer used derogatory and insulting language towards the complainant while issuing him a parking ticket and thereby violated subsection 1(g)(iii) of the Code of Offences. The Chair found that a case of incivility was not established in the actual words that P.C. Stephens used, nor could a disrespectful attitude be proved beyond a reasonable doubt.

2. Re: Young and P.C. Arnold
September 14 and November 24, 1988
Chair: Mr. Derry Millar
Hearing ordered by Public Complaints
Commissioner

Chair Millar substantiated the complaint lodged by Mr. Young against P.C. Arnold. Mr. Young had alleged that P.C. Arnold used insulting and profane language to him while ticketing him for provincial violations. This conduct was considered to have violated subsection 1(g)(iii) of the Code of Offences. Despite the language used, in light of P.C. Arnold's excellent record, the Chair accepted the recommendation of Crown Counsel and deemed a reprimand as appropriate.

C. DIVISIONAL COURT APPEALS

1. Re: Gojdos and P.C. Cooper
November 23, 1988
Court: Osler, Reid and Fitzpatrick JJ.

On November 23, 1988, the Divisional Court dismissed the above-noted appeal brought by P.C. Cooper without written reasons (Copy of Endorsement in Appendix A).

2. Re: Khoury and P.C. Pike
November 23, 1988
Court: Osler, Reid and Fitzpatrick JJ.

On November 23, 1988, the Divisional Court dismissed the above-noted appeal brought by P.C. Pike without written reasons (Copy of Endorsement in Appendix B).

D. JUDICIAL REVIEW

1. Ramsay v. The Chief of Police and the Board of Commissioners of Police
June 14, and 15, 1988
Court: Reid, Craig and Boland JJ.

In this case, an application was brought for judicial review requiring the Chief of Police, or his designate, to review the final investigation report and render a decision so that Mr. Ramsay's complaint could proceed. The Chief of Police had declined to render a decision on this complaint because the complainant had launched a civil action arising out of the same facts and that action remained outstanding. On September 30, 1988 Mr. Justice Reid of the Divisional Court delivered his decision requiring the Chief of Police to render a decision (Copy of Decision in Appendix C).

E. DIVISIONAL COURT MOTIONS

1. Re: Hendry and P.C. Vetere
and P.C. Giancola
October 31, 1988
Court: Parker C.J.
and
November 21, 1988
Court: Reid J.

a) As mentioned in the 1987 Annual Report, P.C. Giancola successfully appealed a finding of misconduct by a Board of Inquiry which had been called by the Chief of Police. P.C. Vetere, who had not participated in most of the proceedings before the Board and who had not launched an appeal against the finding of misconduct on his part, launched a motion before Chief Justice Parker requesting an extension of time to file a Notice of Appeal. On October 31, 1988, the Court granted the motion extending the appeal time for five days.

b) As a result of the Notice of Appeal being filed, the order of the Board dismissing P.C. Vetere was stayed pursuant to Rule 63 of the Rules of Civil Procedure. The result of the stay was that P.C. Vetere would resume his duties as a police officer. On November 21, 1988, the Metropolitan Toronto Board of Commissioners of Police

brought a motion to have the stay lifted. The basis of their request was that they should not be forced to reinstate P.C. Vetere after this lengthy period of time especially as he had had a prior criminal conviction for another assault registered against him.

The application was dismissed by the Court, which held that the Board of Commissioners had failed to show that it had standing in this matter.

P.C. Vetere's appeal is pending.

F. COURT OF APPEAL DECISIONS

1. Re: Neely and P.C. Weller
January 11, 1988
Court: Associate Chief Justice Dubin;
Zuber and Robins JJ.

On January 11, 1988, the Court of Appeal dismissed P.C. Weller's application for leave to appeal the decision of the Divisional Court upholding the finding of the Board of Inquiry requiring him to resign within seven days or be dismissed (Copy of Endorsement in Appendix D).

APPENDICES

Certificate of Official Document

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APPENDIX A

D/C 942/85

FILE NO.

SUPREME COURT OF ONTARIO

This is to Certify that the annexed document, each page of which is stamped with the seal of the said Court as identifying the same, is a true copy of the endorsement of Honourable Mr. Justice Osler, the Honourable Mr. Justice Reid and the Honourable Mr. Justice Fitzpatrick, dated the 23rd day of November, 1988.

B E T W E E N :

POLICE CONSTABLE MICHAEL COOPER

Appellant

- and -

METROPOLITAN TORONTO POLICE COMPLAINTS BOARD
and PETER GOJDOS

Respondents

Given under my hand and seal of the said Court, atToronto.....
this28th..... day ofNovember....., 19.88.,
being an officer duly authorized to give this certificate.


A.P. BRIDGES, REGISTRAR, DIVISIONAL COURT

IN THE SUPREME COURT OF ONTARIO
(Divisional Court)

942/85

B E T W E E N:

POLICE CONSTABLE MICHAEL COOPER,

Appellant,

- and -

METROPOLITAN TORONTO POLICE COMPLAINTS BOARD
AND PETER GOJDOS,

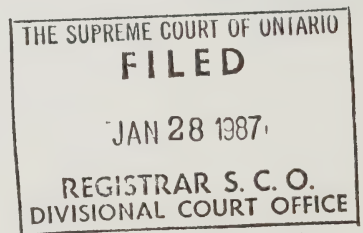
Respondents.

APPEAL BOOK

Damien R. Frost
Barrister & Solicitor
99 Charles Street East
Toronto, Ontario
M4Y 1V2

(416) 923-1900

Counsel for the Appellant.



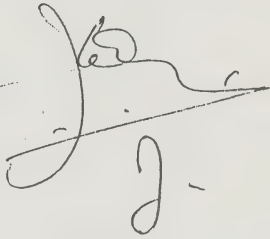
BEFORE Mr. Justice Pilon, Read Ed Fitzpatrick

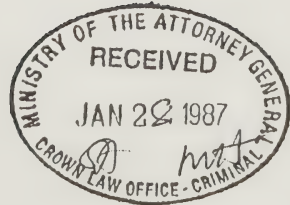
DATE Wednesday 23 November 1988

DISPOSITION OF APPEAL

We find no basis in law upon which we
can set aside the findings of the Board & cannot
therefore interfere with their disposition.

Appeal ~~Dismissed~~ is dismissed. No costs.

23/11/88 



SUPREME COURT OF ONTARIO

This is to Certify that the annexed document, each page of which is stamped with the seal of the said Court as identifying the same, is a true copy of the endorsement of the Honourable Mr. Justice Osler, the Honourable Mr. Justice Reid and the Honourable Mr. Justice Fitzpatrick, dated the 23rd day of November, 1988.

B E T W E E N :


POLICE CONSTABLE RALPH PIKE

Appellant

- and -

METROPOLITAN TORONTO POLICE COMPLAINTS BOARD
and NASRI J.S. KHOURY

Complainant



Given under my hand and seal of the said Court, atToronto.....
this18th..... day ofMay....., 1989.,
being an officer duly authorized to give this certificate.

Oster J. 1222/
A3,

IN THE SUPREME COURT OF ONTARIO
(DIVISIONAL COURT)

B E T W E E N:

POLICE CONSTABLE RALPH PIKE,

Appellant,

- and -

METROPOLITAN TORONTO POLICE COMPLAINTS BOARD
AND NASRI J.S. KHOURY,

Complainant.

APPEAL BOOK

Damien R. Frost
Barrister & Solicitor
99 Charles Street East
Toronto, Ontario
M4Y 1V2
(416) 923-1900

Solicitor for the Appellant.

FEB 26 1997

THE SUPREME COURT OF ONTARIO
JUDICIAL OFFICE

THE SUPREME

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DIVISIONAL COURT

- 78 -

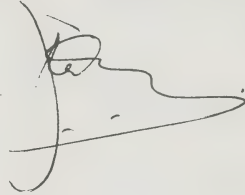
BEFORE *Mr. Justice Gubbins, J. and Mr. Fitzpatrick*

DATE *Wednesday 23 November 1988*

DISPOSITION OF APPEAL

*We can see no error in law in what was
done by the Chancellor, or in his written reasons &
the appeal must be dismissed. No costs asked for or given.*

23/11/88



*Service upon the Hon. of A.G.
is hereby admitted*

JK Stewart

FEB. 26 1989

APPENDIX C

File No. 97/88

SUPREME COURT OF ONTARIO

DIVISIONAL COURT

REID, CRAIG AND BOLAND JJ.

IN THE MATTER OF the Metropolitan)
Toronto Police Force Complaints)
Act, 1984, S.O. 1984, c.63)

AND IN THE MATTER OF the Metropolitan)
Police Force Complaints Project Act,)
1981, S.O. 1981, c.43)

AND IN THE MATTER OF the Police Act,)
R.S.O. 1980, c.381, as amended)

AND IN THE MATTER OF an Application)
under the Judicial Review Procedure)
Act, R.S.O. 1980, c.224)

Peter I. Waldmann
for the Applicant

John Swaigen
for the Respondents

Leslie McIntosh
for the Attorney
General of Ontario,
Intervenor

BETWEEN:

DANA JOHN RAMSAY)
Applicant)

-and-

THE CHIEF OF POLICE and)
THE METROPOLITAN TORONTO BOARD OF)
COMMISSIONERS OF POLICE)
Respondents)

Heard: June 14 and 15,
1988

REID J.

On this application for judicial review applicant Ramsay seeks an order requiring the Chief of Police for Metropolitan Toronto (Jack Marks) or his designate, to review the final investigation report on Ramsay's complaint and refer it to the respondent Board for a hearing.

The Attorney General intervenes by right pursuant to s.10(4) of the Judicial Review Procedure Act, R.S.O. c.224, which provides:

Notice of an application for judicial review shall be served upon the Attorney General who is entitled as of right to be heard in person or by counsel on the application.

Ms. McIntosh informs us that the position she asserts on behalf of the Attorney General expresses the views of the Public Complaints Commissioner, Chairman of the Police Complaints Board appointed under the Metropolitan Police Complaints Project Act, S.O. 1981, c.43, (the Act). She supports the applicant's position.

The Events of 1984

The story begins in 1984 with an assault Ramsay alleges he suffered at the hands of three members of the Metropolitan Toronto Police Force at Exhibition Stadium in Toronto on August 26 of that year. On September 7, Ramsay laid a complaint against those police officers under the Act. It may be worth mentioning here that the Act was repealed and replaced by the Metropolitan Police Force Complaints Act, S.O. 1984, s.63, which came into force on 21 December, 1984, but it governs this application nevertheless by virtue of s.34(2) of the latter, which provides

34(2) Notwithstanding subsection (1), the Metropolitan Police Force Complaints Project Act, 1981 shall continue in force and apply to a complaint that is made before the day this Act comes into force, for the purpose of continuing the proceedings in respect of that

complaint, but the proceedings at any Board hearing commenced after the day this Act comes into force shall be in accordance with the provisions of this Act.

The provisions of the Act relevant to this application were repeated in the 1984 Act.

The launching of the complaint led to an internal investigation by the police force. About October 12, Ramsay's counsel received a copy of an interim report on the investigation prepared by Sergeant Steven Marrier. On October 15, Ramsay's counsel sent a letter to Sgt. Marrier describing in detail the circumstances from which the complaint stemmed. This led to a further interim report by Sgt. Marrier dated November 13.

The Events of 1985

We move into 1985. On February 21, Ramsay commenced an action for damages against the officers in the Supreme Court of Ontario. The Chief of Police was also made a defendant in that action pursuant to s.24 of the Police Act, R.S.O. 1980, c.381, as amended. Section 24 reads in part:

24(1) The chief of police is liable in respect of torts committed by members of the police force under his direction and control in the performance or purported performance of their duties in like manner as a master is liable in respect of torts committed by his servants in the course of their employment and shall in respect of any such torts be treated for all purposes as a joint tortfeasor.

On receipt of this report, Aubrey Golden Q.C. who, with Mr. Waldmann are counsel for Ramsay, wrote on June 6 to S. B. Linden Q.C., the Public Complaints Commissioner, to state that "Contrary to the statement contained in that report, Mr. Ramsay did not withdraw his complaint against the three officers and desires to vigorously pursue these complaints through your office." On June 10 Mr. Linden replied that he had "written to the Staff Inspector in charge of the Public Complaints Investigation Bureau, asking him to continue investigating this matter".

Nothing occurred until October 4 when counsel for Ramsay wrote to Mr. Linden to request expressly that he undertake his own investigation pursuant to s.14(3)(a) or (c) of the Act. The request was based on the failure of the police to take any effective action. In his letter Mr. Golden pointed out that his June 6 request that the Commissioner undertake an investigation had "apparently (been) misconstrued" and went on to say,

...and in a letter dated June 10th, 1985 you advised us that you had requested the Police Complaints Investigation Bureau "to continue investigating this matter". Notwithstanding the other concerns detailed in our letter of June 6th, 1985, we were content to leave matters alone, confident that as the Bureau had investigated this matter for some 9½ months before submitting the "final report" on May 24th, 1985, a conclusive final report would be quickly forthcoming.

A further period of almost 4 months has now passed. During this time not only have we not received the final report, but we have

(2) Where a chief of police is liable in respect of a tort committed by him in the performance or purported performance of his duties, he is also liable and may be sued separately in his capacity as chief of police for the purposes of subsection (4).

Section 24(5) provides that where damages and costs are awarded against a member of a police force the council of a municipality "may, in such cases and to such extent as it thinks fit", pay any such damages and costs, or in connection with a settlement, but s-s.4 provides that the municipality "shall" pay any damages and costs awarded against the chief of police, and, subject to the approval of the council, any sum required for a settlement. In the light of the positive obligation on a municipality to pay damages and costs awarded against a chief of police as vicariously liable for the acts of his officers, there would appear to be a virtual obligation on the part of counsel for a plaintiff in an action against officers of a police force to include the chief as a defendant. I shall have more to say about the claim based on s.24 later.

Mutual criminal charges had been laid by Ramsay and the officers but on May 13 these were withdrawn by agreement. Thereupon the officer in charge of the investigation, who by then was Staff Sergeant Williams, made a "Final Report" dated 24 May which concluded, "As the complainant has withdrawn his complaint in court, no further action will be taken". There was no agreement to withdraw the complaint and thus no basis for the decision to end the investigation.

not received an interim report or other communication from the Bureau indicating the status of their investigation.

After repeated attempts our office was finally able to contact Staff Sergeant Williams on October 1st, 1985. At that time Staff Sergeant Williams indicated that there was yet another witness which he felt compelled to interview before he would be confident that he had been "thorough" in his investigation. What's more, the Sergeant indicated that in view of the fact that a "final report" had been issued on May 24th, 1985 no interim reports were contemplated and further that at the conclusion of his investigation he would simply direct a letter to the "deputy" who would decide what further step to take: no (new) "final report" would be made.

The failure to issue interim reports is clearly in violation of s.9(2) of the 1981 Act (s.11(2) of the 1984 Act) unless the Commissioner has been notified pursuant to s.9(3) of the 1981 Act (s.11(3) of the 1984 Act).

The suggestion that no (new) final report will be issued is in violation of s.9(4) of the 1981 Act (s.11(4) of the 1984 Act). If, as the Bureau was obliged to assume by your direction of June 10th, 1985, this matter was not closed, then the "final report" on May 24th, 1985 could be no more than an interim report and they would be obliged to issue a new final report at the completion of their investigation.

These suggestions, however pale next to the egregious proposition that the reason for the now 13½ months delay in concluding this investigation is because of its thoroughness. If the police were as thorough in investigations of assaults alleged to have been made by other than their number the administration of justice would be in a sorry state indeed.

We are concerned that further delay by the Bureau should not be permitted. We are also concerned, as noted in our letter of June 6th, 1985, that the manner of the conduct of this investigation, and in

particular, as we strongly suspect, the release of material obtained through it to the officers against whom the complaint has been brought or their counsel is prejudicial to the interest of our client in civil litigation which we are independently pursuing in this matter.

Accordingly, we would ask that the Commission direct the Bureau to cease its investigation forthwith and that the Commission initiate its own investigation.

As a result, Mr. Clare Lewis Q.C. who had succeeded Mr. Linden as Commissioner, served a Notice of Intention to Conduct an Investigation dated October 21 pursuant to s.14 of the Act. The Commissioner's action was based on the failure of the police force to furnish a summary of the investigation that had been accomplished within thirty days of the receipt of the complaint, pursuant to s.14(3) of the Act, which provides:

14(3) Notwithstanding any other provision of this Act, the Public Complaints Commissioner may inquire into and investigate the allegations in the complaint,

(a) at any time after he receives the first interim report under subsection 9(2) or the thirty-day period mentioned therein has expired;

(b) upon the request of the chief of police; or

(c) where there are reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 9.

Several weeks later Ramsay's counsel received a copy of a report from Staff Sergeant Williams marked "Final Addendum", dated November, which referred to notice from the Commissioner's office to "take over investigation of this complaint" and concluded with the words, "Upon the completion of the investigation conducted by the office of the Public complaints commissioner, the Chief of Police or his designate will review the final report and you will be advised of his decision in due course". As we shall see, this promise has since been repudiated.

The Events of 1986

The page turns to 1986. In May the Commissioner's investigation was completed and forwarded to the Chief of Police. Section 10(1) requires the chief of police to "review a final investigation report" and decide what, if any, action is appropriate. Section 10 reads:

- 10(1) The chief of police shall review a final investigation report and he may order such further investigation as he considers advisable and may, unless he decides that no action is warranted,
- (a) cause an information alleging the commission of an offence by the police officer concerned to be laid and refer the matter to the Crown attorney for prosecution;
 - (b) refer the matter to the Board for a hearing by the Board;
 - (c) cause disciplinary proceedings to be taken under the Police Act and the regulations thereunder; and

(d) after giving the police officer concerned an opportunity to reply to the complaint, either orally or in writing, counsel or caution the police officer regarding his conduct,

but where the chief of police takes action under clause (b), (c) or (d), he shall not take action under any other of those clauses.

(2) Where the chief of police causes an information to be laid under clause (1)(a), such action shall not stay any hearing by the chief of police or by the Board unless the chief of police or the Board, as the case may be, is of the opinion that the hearing should be stayed until the court proceedings have been concluded.

(3) The chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Public Complaints Commissioner, the person who has made the complaint and the police officer concerned and, where his decision is that no action is warranted or he has taken action under clause (1)(d), the chief of police shall give his reasons therefor.

(4) The chief of police may designate any police officer to exercise any of his powers and perform any of his duties under this Act and the police officer so designated has the powers and duties set out in the designation and where any power is conditional on the opinion of the chief of police, the requisite opinion shall be that of the designated officer.

Where the Commissioner has conducted an investigation the chief is required to consider it in his review of a final investigation report. Section 14(5) reads:

14(5) The Public Complaints Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an inquiry and investigation under clause (3)(a) or (c) and shall give his reasons therefor in

writing and, after he completes any inquiry and investigation under subsection (3), he shall forward the results thereof to the chief of police, and the chief of police shall consider such results in his review of the final investigation report under subsection 10(1).

The term "final investigation report" stems from s.9(4). It reads:

9(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report to be prepared and shall forward a copy thereof to the Public Complaints Commissioner, the chief of police, the person who made the complaint and the police officer concerned.

The "Bureau" referred to in s.9 is the Public Complaints Investigation Bureau that a chief of police is required to establish. Section 5 of the Act reads:

5(1) The chief of police shall establish and maintain for the purposes of this Act a branch of the Metropolitan Police Force to be known as the Public Complaints Investigation Bureau.

(2) The chief of police shall ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints.

Thus, by May of 1986 the Chief was in possession of all that was required for the review the Act required. The Bureau's "Final Report" had been completed in May, 1985. Its "Final Addendum" had been completed in November, 1985. But the Chief did nothing. Having heard nothing from the Chief, Mr. Golden wrote on October 14 to Commissioner Lewis to say:

A considerable time has passed since the commission has completed its investigation and reported. In view of the previous history of this matter, we respectfully request that you take whatever steps you may be able in order to speed up the process.

The response was that the Commissioner's report had been forwarded to the Chief of Police on or about May 13.

In November, counsel for Ramsay wrote to Chief Marks, and said:

We are advised by the office of the Public Complaints Commissioner that their investigation was completed and forwarded to the Chief of Police on May 13, 1986.

You, as Chief of Police, are required by s.10 of the Metropolitan Police Force Complaints Project Act, 1981, or by s.14 of the Metropolitan Police Force Complaints Act, 1984, to make a decision, and to forthwith give notice of that decision to, among others, the complainant.

We also remind you that you are a defendant in a civil action brought by the complainant arising from the same subject matter as the complaint, S.C.O. Action No. 991/85.

If within 20 days of this letter a decision is not made as required by the above statutory authorities, and notice given of same, we will bring an application for judicial review to the appropriate Court.

By letter dated 3 December, R. Malcom, who signed it as "A/Deputy Chief of Police, Complaint Review Officer", wrote to Ramsay's counsel as follows [s.14(7) is s.10(4) of the Act]:

This is to acknowledge your letter of November 27, 1986, addressed to Chief Marks. The Chief has requested that I respond on his behalf in the capacity of an officer of this Force designated by the Chief to exercise the powers of the Chief as provided in the Metropolitan Toronto Police Force Complaints Act, section 14(7).

Accordingly, I now advise you that since your client has brought a civil action against the Chief following the filing of the complaint, no final investigation report, under section 14, will be delivered in this matter until such time as the civil action has been disposed of.

The reason for this decision is that to render a decision on the complaint at this time might place the chief in a position of conflict of interest with the individual police officer defendants in the civil action and violate a trust arrangement with such officers arising out of the fact that both the Chief and the officers are defended by the same solicitor in the civil action.

If you feel this an insufficient reason then we would welcome your application for judicial review to determine the issue.

The promise of a review given in the "Final Addendum" report was made long after the commencement of the civil action. Although nothing has changed the promise was now repudiated.

The Events of 1987

We thus come to the year 1987. On October 7, Ramsay's counsel wrote to the Metropolitan Board of Police Commissioners. He directed the letter to the attention of the Chairman, Clare Westcott, reviewed the history of the matter, and requested the Commissioners to direct the chief to fulfil his statutory obligation. His letter said:

On September 7, 1984 our client, Dana Ramsay filed a formal complaint with the office of the Public Complaints Commissioner alleging that the above-named officers assaulted him on the 26th of August, 1984 in an enclosed hallway at Exhibition Stadium in Toronto.

After numerous delays in the investigation by the internal police public complaints bureau the Public Complaints Commissioner has, by notice dated October 21, 1985 assumed the conduct of the investigation. Its report was delivered to the Chief of Police on May 13, 1986 to enable him to exercise his jurisdiction under Section 14 of the Metropolitan Toronto Police Force Complaints Act.

To this date, the Chief of Police has done nothing. He has neither taken disciplinary action against the officers involved nor has he indicated that no action would be taken. His inaction is deliberate and has continued the delay in dealing with the officers to a point now three years past the event which is the subject of the complaint. By simply doing nothing he has effectively prevented my client from proceeding to the Commission in disciplinary proceedings and has totally frustrated the processes of the legislation granting citizens their right to impartial review.

Section 18(5) of the Act requires the chief of police to make a decision on the report. I am writing to you in an effort to secure the performance of this duty so that my clients and the Commissioner can pursue their respective rights and duties.

This matter is replete with attempts by the police complaints bureau to sidetrack the investigation and discourage Mr. Ramsay from pursuing the discipline of the officers involved.

As is usual in cases such as this, the police officers involved laid charges of obstructing a police officer against my client and against others, some of whom are his friends and relatives. The officers themselves were charged with assault. In order to prevent his friends being tried, Mr.

Ramsay withdrew his charges against the police in exchange for the Crown's withdrawal against all the civilians on May 13, 1985.

On May 24, 1985, the Bureau reported on the mutual withdrawal of the charges and noted at the bottom of the report of that date "AS THE COMPLAINANT HAS WITHDRAWN HIS COMPLAINT IN COURT, NO FURTHER ACTION WILL BE TAKEN".

This highly misleading statement required us to write the commissioner who then wrote the Staff/Inspector in charge of the Public Complaints Investigation Bureau, asking him to continue investigating the matter and, subsequently, at our request, on October 21, 1985 assuming the conduct of the investigation directly.

As we have earlier indicated, the report of that investigation was sent to the Chief of Police on May 13, 1986. He has specifically refused to take any action or to decline to take any action, effectively tying the hands of the commissioner and our client. We feel strongly that this deliberate frustration of the process is contrary to the spirit and intent of the act, is clearly wrong and we respectfully request that the Commission direct the chief of police to carry out his duties under the Act.

Mr. Ramsay commenced an action for damages against the relevant officers on February 21, 1985. The Chief of Police has been named as a defendant in the action solely because of the mandatory provisions of Section 24(1) of the Police Act. It is not alleged that he was involved in the incident in any way.

In a letter to our office dated December 3, 1986, his Assistant Deputy has advised that "no final investigation report, under Section 14, will be delivered in this matter until such time as the civil action has been disposed of." His letter claims a conflict of interest would arise with the individual police officers and "violate a trust arrangement with such officers arising out of the fact that both the Chief and the officers are defended by the same solicitor in the civil action." Such a position is not

only incomprehensible, it is clearly in violation of the statutory duty of the chief to make a decision as required by Section 18(5) of the statute.

We also note that the chief may designate any police officer of the rank of inspector or higher to exercise any of his powers and this substitution has not been made. (Sec. 14 (7)). The final investigation report has been made by the Commission.

We have threatened judicial review proceedings. However, on consideration of the underlying philosophy of the statute and the policy of the commission concerning the discipline of police officers we felt that this direct approach would avoid the resulting substantial loss of time and tremendous cost, neither of which burden should be carried by a citizen who wishes to have the conduct of these three officers toward him investigated and, if warranted, punished.

Three years have now passed since the initial complaint was filed. Our client alleges that he was deliberately and severely beaten by the officers in question and they have, in turn, denied his allegations. It is clear that the issue is one of overwhelming public importance and that any further delay created by the police department in bringing these allegations to a proper adjudication is a denial of justice and will undermine confidence in the system which has been so carefully established in Metropolitan Toronto for impartial review.

We respectfully request that you direct the chief of police to either delegate his responsibility to decide to take action or not or to assume the responsibility himself.

This brought a response from Jane E. Egan, a solicitor in the employ of the Metropolitan Toronto Legal department. On October 14, she wrote to Ramsay's counsel:

I have a copy of your letter dated October 7th, 1987 addressed to Mr. Westcott. Mr. Parker has given me the copy of the letter you sent to him. As you know, I have also taken over the handling of the defence of the civil action from Mr. Parker.

From your own letter, it is clear that the Chief of Police has done something regarding the complaint. In the last paragraph on page two of your letter it is obvious that the Chief, through his designated officer; i.e., the Deputy Chief, has advised you about the reason why he has not reviewed a final investigation report.

You have accused the Chief of deliberately trying to frustrate the complaint process. Such an accusation is most unfair. As Mr. Lewis can confirm, the position taken by the Deputy Chief in this complaint is the position taken on all complaints where this office is defending the Chief and individual officers in civil actions. The legal opinion that the Deputy Chief should not review the final investigation reports pending dispositions of civil actions, because of a conflict of interest, came from this office, as Mr. Lewis knows.

I have no idea what you mean by saying that "this matter is replete with attempts by the police complaints bureau to sidetrack the investigation...". Your client is free to submit complaints about the conduct of any such officers.

I am somewhat surprised that it has taken you until October 7th to complain about a letter you received from the Deputy Chief almost ten months ago.

The fact of the matter is that you could arrange a pre-trial in the civil action and have it put on the assignment court list within a few short months. The trial could be heard in January if you took these steps. Once the trial has been held, the Deputy Chief could then review the final investigation report.

In other words, I don't understand why you don't proceed with the civil action? It would be much quicker than judicial review proceedings.

I am not sure why you have directed your letter to the attention of Mr. Westcott. The Board of Commissioners of Police has no role under the legislation in these circumstances. Since the Chief and the designated officer are acting upon legal advice, the personal nature of your attack is unjustified.
[Emphasis added]

Disregarding the unfortunate tone of this letter I am bound to disagree with the statement that the civil action "would be much quicker than judicial review proceedings". I doubt it. The letter discloses a policy of delay adopted by the police force on the advice of the legal department which we will see further revealed in further communications. I have added emphasis in the foregoing extract to stress the general adoption of the policy; it is not confined to this action. It is applied whether the chief is sued personally under s.24(5) or vicariously, as here, under s.24(1).

The response from the Police Commission was brief. On October 19 Clare Westcott wrote to Mr. Golden:

I have received a copy of the letter dated October 14th sent to your attention by Jane Egan from the office of the Metro Solicitor in which she responded to your letter to me of October 7th.

I can see little that I might add to what Ms. Egan has set out in her letter to you.

I have had as well recent correspondence with Clare Lewis, Public Complaints Commissioner, on this issue and specifically as it concerns your client Mr. Ramsay.

I will say, however, that I will be bringing the complete file to the attention of the Members of the Board of Commissioners for their information in the next few days.

On October 27 Ramsay's counsel Mr. Waldmann wrote to Ms. Egan, as follows:

Your letter addressed to Aubrey Golden of our firm has been passed to me for response.

We do not consider the Chief of Police's deliberate decision to do nothing about the complaint, thereby throwing a roadblock into the complaint process, the same as doing "something about the complaint". Doing nothing is not one of the options that the Chief of Police has been given under the Act. His duty is set out clearly in s.14(1) of the Metropolitan Toronto Police Force Complaints Act which requires him to review the final investigation report and to either;

- decide no action is warranted; or
- cause an information to be laid (a);
- order the complaint to be heard by a board of inquiry (b);
- cause disciplinary proceedings to be taken; or
- caution the police officer regarding his conduct.

The Chief of Police is also fully aware that his decision to do nothing frustrates the complaint process. It is only after his decision has been made under s.14(1) that the complaint can proceed.

You indicate that this decision should not be characterized as deliberate because it is based on a legal opinion. You state this legal opinion is based upon conflict of interest. However, you do not indicate what exactly this conflict is, and why this would prevent the Chief of Police from designating a police officer under s.14(7) to make the decision, thereby permitting the complaint to proceed. Surely, you are not suggesting that all police officers have a conflict of interest whenever there is a complaint against one of them. Further, a legal opinion is not an excuse for disobeying the law.

You indicate that the Chief of Police has a consistent policy of disobeying s.14 of the Act, whenever a complaint is serious enough to cause the complainant to bring a civil action. There is no provision in the Act permitting the chief to ignore the Act's mandatory directions on the basis that there is a civil suit.

In respect of attempts to sidetrack the investigation, you must be aware that the police investigator on the complaint tried to end the complaint on his own in May of 1985, contrary to s.12 of the Act. This required intervention by the Police Complaints Commissioner on June 10, 1985. Notwithstanding this first intervention, the Police Complaints Commissioner had to again intervene and remove the investigation from the police in October of 1985. I provide these examples to you merely by way of illustration.

You are fully aware that the civil suit is proceeding and that the only delay is due to your clients' refusals to answer questions on Examinations for Discovery. In our conversation of yesterday, we agreed to the first available date the court has for the motion on these refusals, being January 7, 1988.

The reason for directing this matter to the attention of the Board of Commissioners of Police is that the Board has a direct interest in whether the Chief of Police has a policy and practice of

disobeying the law. Further, the Board has the power to direct the chief of Police to obey the law in s.17(1) of the Police Act.

Section 17(1) of the Police Act R.S.O. 1980, c.381

states:

17(1) Notwithstanding section 2, the board is responsible for the policing and maintenance of law and order in the municipality and the members of the police force are subject to the government of the board and shall obey its lawful directions.

Mr. Waldmann wrote also on the same day to Mr.

Westcott. He said:

Thank you for your letter of October 19, 1987 addressed to Aubrey Golden, which has been passed to me for response. I enclose for you a copy of our letter of today to Jane Egan, replying to her position set out in her October 14th letter.

It is our opinion that the Board of Commissioners of Police has an interest in ensuring that the Chief of Police obeys the law, and that it has the power under s.17 of the Police Act to direct the Chief to do so.

As recently as October 24, 1987, the Globe & Mail quoted yourself as saying (with regard to another law, the Young Offenders Act): "We have to follow the letter of the law very strictly, and that's what was done".

The Metropolitan Toronto Police Complaints Act is also part of the law, and has to be strictly followed. Ms. Egan's letter of October 14th indicates that there is now in force a policy and practice to disobey s.14 of this law whenever the matter is so serious that the complainant brings a civil action.

We ask that this matter be placed upon the agenda of the next meeting of the Board, and that we be permitted to address the Board on this question.

Ms. Egan responded in the following terms in a letter to Mr. Waldmann dated October 28th:

I am not going to enter into a debate with you regarding the legal opinion given to the Chief. I suspect the Board will not be interested in hearing a legal debate either. Your remedy is in the courts.

I did not indicate that the chief has "a consistent policy of disobeying Section 14 of the Act". There is little point in attributing your statements to me.

I do not monitor complaints investigations. If your client has a complaint about the investigation, you know where to file it.

As far as the civil action is concerned, the pace at which you proceed is up to you. The fact that it has taken you several months to schedule a motion has nothing to do with me or my clients.

Frankly, I think the only reason you are writing directly to the Board is to try and intimidate the Chief. Mr. Golden didn't even have the courtesy to send a copy of his letter of October 7, 1987 to the Chief.

It is extremely offensive to suggest that the Chief "has a policy and practice of disobeying the law". However, the Chief does have a policy and practice of following legal advice.

The correspondence with the Board of Police Commissioners concludes with Mr. Westcott's letter to Mr. Golden of December 17 as follows:

This is in response to your correspondence requesting the Board to direct the Chief of Police to take certain actions under the Complaints Act with respect to the abovenoted complaint.

The Board has concurred in an opinion from the Metropolitan Legal Department that it does not have jurisdiction to direct the Chief of Police in this matter. The Board understands, however, once the trial in the civil action is held, the Deputy Chief can review the final investigation report.

The Board must adhere to the legal considerations that apply in these cases, but understands the concerns raised in your correspondence. As you know, the Public Complaints Commissioner has also indicated his concerns about delays in the complaints process by reason of outstanding criminal or civil matters, and the Board will be meeting with him at a future date to discuss this matter.

Whether the Board ever had the meeting proposed to discuss the Public Complaints Commissioner's concern about delays in the complaints process we were not told.

The Events of 1988

That completes the correspondence filed by applicant. However, respondents have placed before us further correspondence which, confirms that the chief, the Board, and presumably the the police officers, are relying on advice given by Ms. Egan. Thus we have a letter from Ms. Egan to Mr. Waldmann dated February 2, 1988 - we have now reached that year - in which she says:

1988. It was that "complainants like Mr. Ramsay would perceive some bias or conflict of interest on the part of the Chief regarding any decision he made under the Act, in view of the fact that the Chief was also being sued with the individual officers."

Whichever reason is taken as the real one, it is not a basis for delay in acting on the final report or for a refusal to act on it that is recognized by the Act. There is nothing in the Act to justify either refusal or delay. The problem arising from all defendants being represented by the Metro Legal Department is the creation of the chief, the Board, and the police officers and the legal department. We were assured by Mr. Waldmann on the hearing of the application that the chief is not being sued in his personal capacity pursuant to s.24(2) but only for the purpose of imposing liability on him in his titular capacity of chief, pursuant to s.24(1) of the Police Act, in order to make the municipality responsible for any judgment for damages that Ramsay might obtain. To assert a claim of that nature is not only prudent, it is clearly essential in an action against police officers. I would think that any lawyer acting for a claimant in Ramsay's type of claim might be thought to be derelict in duty for failure to include such a claim, for if the individual police officers were unable to pay an award of damages a successful plaintiff would go away empty-handed, or worse, out of pocket to the extent of his or her solicitor and client bill. If the chief is being sued on the basis of his vicarious liability there may, I suppose, possibly exist a conflict. The statute imposes the

common law of master and servant. How that concept could be made to apply, given that police officers are not in the ordinary category of employees, I need only question, not decide, but I note that the point is raised in the statement of defence. But apart from that the chief could, in appropriate circumstances, defend on the ground that the officers were acting outside the scope of their duty. A conflict could arise if the officers claimed they were simply obeying orders. In such a case separate representation would be necessary.

But that is not this case. In the statement of defence filed in the civil suit the officers allege they "were carrying out their duties as police officers." There is no allegation that they were acting outside the scope of their duty. There is thus no conflict among the defendants.

The second excuse for the chief's inaction given by Ms. Egan in her letter of February 2 based on a perception by Ramsay or "complainants like" him of "some bias or conflict of interest on the part of the Chief regarding any decision he made under the Act" is clearly untenable in light of the chief's authority to delegate the responsibility for the decision to someone else, found in s.10(4) of the Act on p.9 of these reasons. Indeed, the chief appears to have already made a delegation. In his letter of December 3 Deputy Chief Malcolm states that he is responding at the request of and on behalf of the Chief "in the capacity of an officer of this Force designated by the Chief to exercise the powers of the Chief as provided in the (Act)". In the light of

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this, it is difficult to understand Ms. Egan's letter, written after Deputy Chief Malcolm's, that it was Chief Marks who would be called upon to make the decision in this case.

There is thus nothing in either reason and no basis for the legal opinion on which the policy of delay adopted by the Chief, the officers and the Board of Police Commissioners, is said to rest.

The legislation serves a clear public purpose: it is to shield the public against wrongful acts by members of the police force, and to provide a process by which allegations of wrongdoing may be resolved without the enormous trouble and expense of a trial in the law courts. Ms. Egan's invitation to applicant to bring an application for judicial review is without any apparent concern for the cost. An application such as the one Ramsay was finally forced to bring before this court can easily cost in the range of \$15 to \$20 thousand. That is enough to deter most complainants, however strongly they might feel about alleged misconduct by police officers. When it comes to a contest of pocket-books, there is unlikely to be much question about whose is deeper, a complainant's or the Municipality of Metropolitan Toronto's.

The fact is that in persisting with his complaint Ramsay is serving the public interest. There is nothing in it for him. If he is successful, in the sense that the allegations he

makes against the officers are proven, it will not put a penny in his pocket. Nor is there any other apparent advantage to be gained by him personally save vindication. The effect of success will be only in terms of some discipline meted out to the officers as a penalty to them and a deterrent to others. It is only the public who can benefit.

Ramsay has turned without success to everyone who might be thought to be able to help. He has even appealed to the Chairman of Metropolitan Toronto, Mr. Dennis Flynn, whose interest might stem from s.4(6) of the Act, now 4(4), under which Metro nominates one third of the members of the Police Complaints Board. By letter dated October 19, 1987 Mr. Flynn wrote to Mr. Golden to thank him for his letter of October 17 and to say "I am looking into the matters that you have raised, and will get back to you as soon as possible". We were not informed of any action taken by Mr. Flynn. It is perhaps a fair assumption that he was not able to accomplish anything effective for otherwise this application would have been unnecessary.

Since all suits against police officers will involve the chief as a defendant and since a civil suit may be expected as a concomitant to a complaint, the Metropolitan Police Force, with the approval of the Metropolitan Board of Police Commissioners, have effectively frustrated the Ontario legislature's objective to provide a cheap, expeditious and effective means of investigating alleged misconduct on the part

of the Metropolitan police officers. To refuse to review a final report until civil suits have been disposed of is to refuse to do it indefinitely. It is common knowledge that civil law suits can go on for years before judgment, and years thereafter if appealed. A glance at the Act makes it clear that the legislature sought to impose an expeditious timetable for the processing of complaints that is entirely at odds with the notion that they may be delayed to await the outcome of civil law suits. First, there is nothing in the words of the Act to authorize delay on this ground. Rather, there are words to the contrary. Section 10(2) on p.9 of these reasons authorizes the Chief to stay a hearing by him or the Board pending the conclusion of criminal charges he has instigated, on the basis of a common maxim of the interpretation of statutes - *expressio unius est exclusio alterius*: the inclusion of one implies the exclusion of others. The fact that express authority to impose a stay is granted in one situation implies that it is not granted in others.

Beyond that, as Ms. McIntosh points out, the Act contains guidelines clearly intended to accomplish the expeditious resolution of complaints. Section 5 obliges the chief to "establish and maintain" an investigation Bureau, as we have seen, but it also requires the chief to "ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints". The procedure for the

investigation of complaints is replete with "forthwiths". . Ms. McIntosh says there are ten of them. Here are some examples, (with emphasis added). Section 7 states,

7. Upon receipt of a complaint, the person in charge of the Bureau shall inform forthwith the police officer concerned of the substance of the complaint, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint.

Section 9 provides evidence of the legislature's desire for expedition:

9.--(1) Where a complaint is not resolved informally, the person in charge of the Bureau shall cause an investigation to be made forthwith into the complaint in accordance with prescribed procedures.

(2) The person in charge of the Bureau shall forward to the Public Complaints Commissioner, the person who made the complaint and the police officer concerned an interim report in the prescribed form providing a summary of the investigation to date not later than thirty days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation.

(3) Notwithstanding subsection (2), the person in charge of the Bureau may decide not to make a report to the person who made the complaint and the police officer concerned where, in his opinion, to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the Bureau shall forthwith notify the Public Complaints Commissioner of the reasons for his decision.

(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report to be prepared and shall forward a copy thereof to the Public Complaints Commissioner, the chief of police, the person who made the complaint and the police officer concerned.

...

Section 10(3) states:

(3) the chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Public Complaints Commissioner, the person who made the complaint and the police officer concerned and, where his decision is that no action is warranted or he has taken action under clause (1)(d), the chief of police shall give his reasons therefor.

Section 11 states:

11.--(1) Where the chief of police has caused disciplinary proceedings to be taken under the Police Act and the regulations thereunder, subsections 19(4), (6), (10), (11) and (12) of this Act apply with necessary modification to a hearing held in connection with such proceedings.

(2) The chief of police or, if he is not the person who holds a hearing referred to in subsection(1), the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the Public Complaints Commissioner, the person who made the complaint and the police officer concerned.

Section 14 deals with the Public Complaints Commissioner. It also contains provisions that attest to the need for expedition. These include subsection (3):

14(3) Notwithstanding any other provision of this Act, the Public Complaints Commissioner may inquire into and investigate the allegations of the complaint,

(a) at any time after he receives the first interim report under subsection 9(2) or the thirty-day period mentioned therein has expired;

...

(c) where there are reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 9.

...

(5) The Public Complaints Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an inquiry and investigation under clause (3)(a) or (c) and shall give his reasons therefor in writing and, after he completes any inquiry and investigation under subsection (3), he shall forward the results thereof to the chief of police, and the chief of police shall consider such results in his review of the final investigation report under subsection 10(1).

The law is clear that statutory powers must not be used to defeat a statutory objective: See Re Doctors Hospital and Minister of Health (1976), 12 O.R.(2d)164; Re Multi-malls Inc. and Minister of Transport and Communications (1976), 14 O.R.(2d) 49. The clear object of the Act is expedition. The objective of this legislation is defeated by a policy of delay.

It is apparent to me that the police force is strongly opposed to the Legislation. What service it has performed in ostensible obedience to it amounts to little more than lip service. The object of the investigation required of the Investigation Bureau is surely to reveal what has been done and discovered to those directly interested, i.e. the complainant, the officer or officers complained against, and the chief. That is made clear by the provisions of section 9 (see above) which

provide for interim summaries to be sent to those persons "on a monthly basis during the course of the investigation" as well as the final report. Even the "prescribed form" makes that clear, in referring to the "type of information and information obtained".

It is thus distressing to see that the reports, which purported to result in not one but two "final" reports, are empty of any useful or relevant information. They amount to little more than a bare and perfunctory calendar of appointments kept or missed. ...

There is nothing in these of any significance whatever. In my opinion, a simple chronicle of dates and times is not compliance with either the letter or the spirit of the Legislation.

It is distressing that four years after a prompt complaint nothing has been accomplished. The reports which the chief was duty bound to review promptly sit on his or his deputy's shelf gathering dust. How many other complaints lie in limbo because of the policy of delay we do not know.

In the result I would grant the application and direct the chief of police forthwith to carry out the duty imposed on him by s. 10 of the Act. He must review the final report, consider the results of the Commissioner's investigation, and make a decision. If there is further undue delay Applicant should be at liberty to bring it to the attention of this court. Any such application should be at the cost of those responsible.

Applicant requests an order directing the chief to refer the complaint to the Complaints Board but in my opinion that we cannot do. The law is clear: mandamus (or its equivalent in the form of a direction obtained on judicial review) lies only to require a statutory duty to be done, not the way in which it shall be done. The chief has a discretion to exercise. The Act gives him alternatives. He may order "such further investigation as he considers advisable", or decide that "no action is warranted". He may choose any of the further alternatives set out in s. 10(1)(a), (b), (c), or (d), (pp. 8-9). The force of my proposed order is that he must make a decision, not what decision he should make.

The final issue is costs. These proceedings were virtually demanded by the respondents. Ramsay's counsel were repeatedly told to "go to court". Deputy Chief Malcolm, "Complaint Review Officer", said in his letter of December 3rd, 1986, "If you feel this (the policy of delay) is an insufficient reason then we would welcome your application for judicial review to

determine the issue." Ms. Egan said, in her letter of October 28th, 1987, "I am not going to enter a debate with you regarding the legal opinion given to the Chief. I suspect the Board will not be interested in hearing a legal debate either. Your remedy is in the courts."

Respondents forced applicant to bring the application and have lost. There is no reason why applicant should be out of pocket as a result. The only just order in my opinion is "costs to applicant on a solicitor and client basis". The Attorney General does not seek costs.

I would grant the application.

Released: September 30, 1988

R. Heid
Dagmar
Schraipf
James J. Boland

SUPREME COURT OF ONTARIO

(COURT OF APPEAL)

This is to Certify that the annexed document, each page of which is stamped with the seal of the said Court as identifying the same, is a true copy of
the Endorsement of the Court of Appeal dated the 11th day
of January, 1988.

in a certain proceeding in the said Court; namely,

TERRENCE WELLER

Appellant

- and -

METROPOLITAN TORONTO POLICE
COMPLAINTS BOARD AND ROBERT
NEELY

Respondent

Given under my hand and seal of the said Court, atToronto.....
this18th..... day ofMay....., 19. 89.,
being an officer duly authorized to give this certificate.

M.A. de Sa.

ASSISTANT REGISTRAR, COURT OF APPEAL

A-69/87

- 115 -

Monday, Jan. 11/88

SUPREME COURT OF ONTARIO
COURT OF APPEAL

BETWEEN:

TERRENCE WELLER

Appellant

- and -

METROPOLITAN TORONTO POLICE
COMPLAINTS BOARD
and ROBERT NEELY

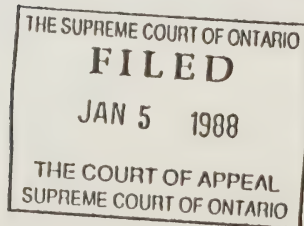
Respondent

SUPPLEMENTARY RECORD

GOWLING & HENDERSON
Barristers and Solicitors
160 Elgin Street
Ottawa, Ontario
K1N 8S3

Gordon Henderson
(613) 232-1781

Solicitor for the Appellant



COURT OF APPEAL FOR ONTARIO
BEFORE DUBIN ACTO ZUBER AND ROBINS JJA
DATE JAN 11 1988
DISPOSITION OF APPEAL

new for summary
dismissed.

The respondent Neely is ordered to
costs to motion.

He has not paid costs.

FOR LEON P. BLO

APP. GORDON HENDERSON Q.C.

RESP. JOHN A OLAN FOR NEELY

A/G LUCY CECCHETTO

Bill 4

APPENDIX E

Government Bill

1st SESSION, 34th LEGISLATURE, ONTARIO

36 ELIZABETH II, 1987

Bill 4

An Act to amend the Metropolitan Toronto Police Force Complaints Act, 1984

The Hon. I. Scott
Attorney General

1st Reading November 4th, 1987
2nd Reading
3rd Reading
Royal Assent

Printed under authority of the Legislative Assembly by the
Queen's Printer for Ontario

EXPLANATORY NOTES

The purpose of the Bill is to permit the extension of the police complaints procedure to municipalities other than Metropolitan Toronto on the request of the municipality.

SECTIONS 1 and 2. The amendments to the definitions adjust the terminology so that it is not confined to Metropolitan Toronto but can apply to any municipality to which the Act applies. The Commissioner's title is changed from "Public Complaints Commissioner" to "Police Complaints Commissioner".

SECTION 3. The new section authorizes municipalities to adopt by-laws requesting the Lieutenant Governor in Council to designate them by regulation (under clause 31 (ca) of the Act, as enacted by section 16 of the Bill). A regulation may only be made where such a by-law is passed.

SECTIONS 4 to 7. The amendments make no change in substance except to refer to all designated municipalities.

SECTION 8. Under existing section 11 of the Act the report of the Bureau's investigation is given to certain persons. The amendment would provide that the result of a further investigation by the chief of police on the request of the Commissioner be given to the same persons.

SECTION 9. Existing section 14 authorizes the chief of police to delegate to an officer of the rank of inspector or higher. The amendment permits the delegation to be to a senior officer where the police force does not have the rank of inspector.

SECTION 10. The amendment removes any doubt that the appeal from the decision of a chief of police on a disciplinary hearing is to be taken under the *Metropolitan Toronto Police Force Complaints Act, 1984* and not the *Police Act*.

SECTIONS 11 to 15. See explanatory note for sections 4 to 7 (except for subsection 13 (1)).

Clause 23 (2) (b) of the Act makes the Attorney General a party to hearings before a board of inquiry, except when the hearing is in respect of a penalty imposed on an officer. The amendment in subsection 13 (1) ensures that the Attorney General is not excluded from participating where the officer's hearing is combined with the complainant's hearing.

SECTION 16. The amendment authorizes a municipality to be designated by regulation where it has passed a by-law requesting the designation.

SECTION 17. The short title of the Act is amended to remove specific reference to the Metropolitan Police Force.

Bill 4

1987

An Act to amend the Metropolitan Toronto
Police Force Complaints Act, 1984

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

1.—(1) Clauses 1 (a) and (b) of the *Metropolitan Toronto
Police Force Complaints Act, 1984*, being chapter 63, are
repealed and the following substituted therefor:

(a) "Bureau" means a Public Complaints Investigation
Bureau established under section 5.

(2) Clause 1 (c) of the said Act is amended by striking out
"Public" in the first line and inserting in lieu thereof
"Police".

(3) Section 1 of the said Act is amended by adding thereto
the following clause:

(ca) "designated municipality" means The Municipality
of Metropolitan Toronto and the municipalities that
are designated by a regulation made under clause
31 (ca).

(4) Clause 1 (i) of the said Act is repealed and the following
substituted therefor:

(i) "police association" means the association as
defined in the *Police Act* for the police force of a
designated municipality.

R.S.O. 1980,
c. 381

(5) Section 1 of the said Act is further amended by adding
thereto the following subsection:

(2) A reference in this Act to a police officer, chief of
police, police force, Bureau, board of inquiry or panel for
boards of inquiry means the one appointed or established for
the designated municipality that the subject officer serves.

References to
local bodies

2. Section 2 of the said Act is amended by striking out "Metropolitan Police Force" in the third line and inserting in lieu thereof "police force of a designated municipality".

3. The said Act is amended by adding thereto the following section:

By laws to
request
application
of Act
R.S.O. 1980,
c. 381

2a.—(1) The council of a municipality that maintains a police force other than by agreement under section 64 of the *Police Act* may, by by-law, request the Lieutenant Governor in Council to designate the municipality as one to which this Act applies.

Idem

(2) The council of a municipality that maintains a police force by agreement under section 63 of the *Police Act* may pass a by-law under subsection (1) only if the municipality providing the services is a designated municipality.

4.—(1) Subsection 3 (1) of the said Act is amended by striking out "Public" in the second line and inserting in lieu thereof "Police".

(2) Section 3 of the said Act is amended by adding thereto the following subsections:

Local offices

(6a) The Commissioner shall establish a local office in each designated municipality.

Communi-
cation to
Commis-
sioner by
local office

(6b) Any matter or thing that is required or permitted by this Act to be given to or served upon the Commissioner shall be given or served at the local office of the Commissioner.

5. Section 4 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 31, section 1, is repealed and the following substituted therefor:

Panels for
boards of
inquiry

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons for each designated municipality to act as members of boards of inquiry.

Recommen-
dations for
appointment

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Idem

(3) One-third of the members of the panel shall be persons, other than police officers, who are jointly recommended for appointment by the board of commissioners of police of the designated municipality, or, where there is no board, the council, and by the police association, if any.

1987

METRO. TORONTO POLICE FORCE COMPLAINTS

Bill 4

3

(4) If the joint recommendations referred to in subsection (3) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to
make joint
recommendations

(5) Before making the recommendation referred to in subsection (4), the Attorney General and Solicitor General shall consider any recommendations made by the board of commissioners of police or council alone or the police association alone.

Individual
recommendations to be
considered

(6) One-third of the members of the panel shall be persons recommended for appointment by the council of the designated municipality.

Recommendations for
appointment

(7) If the recommendations referred to in subsection (6) are not submitted to the Attorney General in writing within the time that the Attorney General may specify, one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to
make
recommendations

(8) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Term

(9) A member of the panel whose term expires without re-appointment continues in office for the purpose of completing the work of a board of inquiry to which the member was assigned before the expiration of the term.

Continuance
in office for
uncompleted
assignments

(10) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (6) of this section, respectively.

Members of
Police
Complaints
Board under
1981, c. 43

(11) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Remuneration

4

Bill 4

METRO. TORONTO POLICE FORCE COMPLAINTS

1987

6. Subsection 5 (1) of the said Act is amended by striking out "Metropolitan Police Force" in the second and third lines and inserting in lieu thereof "police force".

7. Subsection 6 (1) of the said Act is amended by striking out "Metropolitan Toronto" in the second line and inserting in lieu thereof "the designated municipality".

8. Subsection 11 (6) of the said Act is amended by adding at the end thereof "the chief of police, the complainant and the subject officer".

9. Subsection 14 (7) of the said Act is amended by inserting after "higher" in the second line "or, if none, a senior officer who is not a member of the police association".

10. Section 16 of the said Act is amended by striking out "the officer may appeal" in the third line and inserting in lieu thereof "any appeal therefrom shall be taken".

11. Section 21 of the said Act is repealed and the following substituted therefor:

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, the Commissioner shall report the opinion and any recommendations to the board of commissioners of police of the designated municipality or, where there is no board, the council, to the chief of police and to the police association, if any.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the board of commissioners of police or council, as the case may be, shall forward the report along with their comments and any comments submitted to them by the chief of police or the police association, to the Attorney General, the Solicitor General and the Commissioner.

12. Subsection 22 (5) of the said Act is amended by inserting after "subsection 4 (3)" in the fifth line "or (4), as the case

may be" and by striking out "4 (4)" in the seventh line and inserting in lieu thereof "4 (6) or (7), as the case may be".

13.—(1) Clause 23 (2) (b) of the said Act is amended by striking out "where an appeal" in the first line and inserting in lieu thereof "in respect of an appeal that".

(2) Clause 23 (17) (a) of the said Act is amended by striking out "Metropolitan Police Force" in the first and second lines and inserting in lieu thereof "police force".

(3) Clause 23 (17) (b) of the said Act is amended by striking out "Metropolitan Police Force" in the first and second lines and inserting in lieu thereof "police force".

(4) Subsection 23 (20) of the said Act is amended by striking out "Metropolitan Board of Commissioners of Police" in the first line and inserting in lieu thereof "board of commissioners of police for the designated municipality or, where there is no board, the council".

14. Subsection 26 (1) of the said Act is amended by striking out "Metropolitan Police Force" in the second and third lines and inserting in lieu thereof "police force".

15. Section 29 of the said Act is amended by striking out "The Municipality of Metropolitan Toronto" in the second and third lines and inserting in lieu thereof "a designated municipality".

16. Section 31 of the said Act is amended by adding thereto the following clause:

(ca) designating a municipality that has passed a by-law under section 2a as a municipality to which this Act applies.

17. Section 36 of the said Act is repealed and the following substituted therefor:

36. The short title of this Act is the *Police Force Com- Short title
plaints Act, 1984.*

18c. This Act comes into force on the day it receives Royal Commence-
Assent. ment

19. The short title of this Act is the *Metropolitan Toronto Short title
Police Force Complaints Amendment Act, 1987.*

APPENDIX F



Government
of Ontario

Metropolitan Toronto Police Force Complaints Act, 1984

Statutes of Ontario, 1984
Chapter 63

as amended by
1986, Chapter 31

and

Ontario Regulation 494/85

CHAPTER 63

Metropolitan Toronto Police Force Complaints Act, 1984

1. In this Act,

Interpretation

- (a) "Bureau" means the Public Complaints Investigation Bureau;
- (b) "chief of police" means the chief of police of the Metropolitan Police Force;
- (c) "Commissioner" means the Public Complaints Commissioner appointed under this Act;
- (d) "complainant" means a member of the public who makes a complaint in accordance with the provisions of this Act;
- (e) "complaint" means an allegation or allegations, made orally or in writing, by a member of the public, concerning the misconduct of a police officer;
- (f) "inquiry" means an allegation or allegations concerning conduct of a police officer that does not amount to "misconduct";
- (g) "misconduct" means an act or omission on the part of a police officer that constitutes an offence under the Code of Offences set out in the Schedule to Regulation 791 of Revised Regulations of Ontario, 1980, made under the *Police Act*;
- (h) "officer in charge" means the police officer who at any particular time, while on duty, is in charge of and responsible for, the proper functioning of a police facility;
- (i) "police officer" means a police officer on the Metropolitan Police Force;
- (j) "prescribed" means prescribed by the regulations;

R.S.O. 1980,
c. 381

- (k) "regulations" means the regulations made under this Act;
- (l) "subject officer" means a police officer who is the subject of a complaint. 1984, c. 63, s. 1.

Application
of Act

R.S.O. 1980,
c. 381

2. This Act applies to complaints and inquiries made by members of the public respecting the conduct of police officers on the Metropolitan Police Force and hearings under this Act and disciplinary proceedings under the *Police Act* and the regulations thereunder arising out of such complaints. 1984, c. 63, s. 2.

Appointment
of Public
Complaints
Commis-
sioner

3.—(1) The Lieutenant Governor in Council shall appoint a Public Complaints Commissioner, to hold office for a term not exceeding five years, to exercise the powers and perform the duties assigned to him by this Act and the regulations.

Re-
appointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding, in each instance, five years.

Officers,
etc.

R.S.O. 1980,
c. 418

(3) Such officers and employees as are considered necessary from time to time for the purposes of this Act may be appointed under the *Public Service Act*.

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received by him under this Act.

Monitoring
handling of
complaints
and inquiries

(6) The Commissioner shall monitor the handling of complaints and inquiries by the Bureau and the chief of police.

Annual
report

(7) The Commissioner shall report annually on the affairs of his office to the Solicitor General and to the Attorney General and the Attorney General shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Summary of
decisions

(8) The Commissioner shall cause to be prepared and published periodically a summary of the decisions, and the reasons therefor, made by the boards of inquiry under this Act.

Audit

(9) The accounts of the Commissioner shall be audited annually by the Provincial Auditor. 1984, c. 63, s. 3.

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry.

Panel for
boards of
inquiry

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Recommendations
for
appointment

(3) One-third of the members of the panel shall be persons, other than police officers, the appointment of whom the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association have jointly recommended in writing to the Attorney General. 1984, c. 63, s. 4 (1-3).

Idem

(3a) If the joint recommendations referred to in subsection (3) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to
make joint
recommendations

(3b) Before making the recommendation referred to in subsection (3a), the Attorney General and the Solicitor General shall consider any recommendations made by the Metropolitan Board of Commissioners of Police alone or the Metropolitan Toronto Police Association alone. 1986, c. 31, s. 1, *part*.

Individual
recommendations to be
considered

(4) One-third of the members of the panel shall be persons recommended by the council of The Municipality of Metropolitan Toronto to the Attorney General for appointment. 1984, c. 63, s. 4 (4).

Idem

(4a) If the recommendations referred to in subsection (4) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General. 1986, c. 31, s. 1, *part*.

Failure
to make
recommendations

(5) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Term

4 Chap. 63 POLICE FORCE COMPLAINTS Sec. 4 (6)

Idem (6) Recommendations made under subsections (3) and (4) shall be submitted to the Attorney General within such time as he may specify.

Members of Police Complaints Board under 1981, c. 43 (7) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (4) of this section, respectively.

NOTE: Subsection 34 (1) as mentioned in subsection (7) above repealed the *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43. See—1984, c. 63, s. 34 (1).

Remuneration (8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council. 1984, c. 63, s. 4 (5-8).

Establishment of Bureau 5.—(1) The chief of police shall establish and maintain for the purposes of this Act a branch of the Metropolitan Police Force to be known as the Public Complaints Investigation Bureau.

Staff (2) The chief of police shall ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints and inquiries. 1984, c. 63, s. 5.

Where complaints may be made 6.—(1) A member of the public may make a complaint at the Bureau, at any police station in Metropolitan Toronto or at the office of the Commissioner.

Information (2) The person who receives the complaint shall record the complaint in the prescribed form and shall furnish the complainant with a prescribed statement that sets out the procedures that will be followed respecting the complaint and the rights under this Act of the complainant, together with a copy of the complaint.

Preliminary investigation (3) Where a complaint is recorded at a police station, the officer in charge of the station shall take all reasonable steps to ensure that all available evidence is gathered that may be lost if not secured immediately and, if appropriate, ensure that such other preliminary investigation as may be warranted is conducted and that a report concerning such preliminary

investigation is prepared and forwarded to the person in charge of the Bureau.

(4) Where a complaint is recorded at a police station, the person recording the complaint shall forward forthwith to the Bureau and to the Commissioner a copy of the complaint. Copy of complaint

(5) Where a complaint is recorded at the Bureau, the person recording the complaint shall forward forthwith to the Commissioner a copy of the complaint. Idem

(6) Where a complaint is recorded at the office of the Commissioner, the person recording the complaint shall forward forthwith to the Bureau a copy of the complaint. 1984, c. 63, s. 6. Idem

7.—(1) Where a complaint is made by a person not directly affected by the incident, the Commissioner, as soon as practicable after receiving the complaint, shall in writing notify the person directly affected by the incident that a complaint has been made under this Act and advise him that he is entitled to be the complainant. Notification by Commissioner

(2) Where the person directly affected by the incident is not known or can not be found or does not, within thirty days of the date of the notification, file with the Commissioner a written request to be the complainant in the matter, no further action shall be taken under this Act in respect of such complaint. Where no action to be taken

(3) Nothing in subsection (2) shall prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder, and the chief of police shall notify the Commissioner if any such action is taken and the result thereof and either the chief of police or the Commissioner shall then notify the complainant. Action under R.S.O. 1980, c. 381

(4) For the purposes of this section a person who observes an incident shall be deemed to be a person directly affected by the incident. 1984, c. 63, s. 7. Person deemed directly affected

8.—(1) Upon receipt of a complaint, the person in charge of the Bureau may, with the consent of the Commissioner, reclassify any of the separate allegations within the complaint as an inquiry, and the complainant and the subject officer shall be notified forthwith. Reclassification by Bureau chief

(2) The person in charge of the Bureau shall determine whether any investigation is required in respect of an inquiry, Response

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POLICE FORCE COMPLAINTS

Sec. 8 (2)

and if it is, cause such investigation to be conducted, respond to the complainant in writing within sixty days of receipt of the complaint and forward a copy of the response to the Commissioner forthwith.

Reclassification
during
investigation

(3) The person in charge of the Bureau may, during the course of an investigation under subsection (2), reclassify any of the separate allegations within the inquiry as a complaint, and the complainant, the subject officer and the Commissioner shall be notified forthwith.

Personal
record

(4) No reference shall be made in the personal record of any police officer to an inquiry resolved in accordance with subsection (2). 1984, c. 63, s. 8.

Police officer
to be
informed

9. The person in charge of the Bureau shall inform forthwith the subject officer of the substance of the complaint in the prescribed form, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint. 1984, c. 63, s. 9.

Informal
resolution

10.—(1) The person in charge of the Bureau shall consider whether a complaint can be resolved informally and, with the consent of the complainant and the subject officer, may attempt to so resolve the complaint.

Record of
informal
resolution

(2) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved and the complainant and the subject officer shall each signify in writing his agreement to such resolution.

Copy of
record to be
furnished

(3) A copy of a record made under subsection (2) shall be furnished forthwith to the Commissioner, the complainant and the subject officer.

Informal
resolution

(4) A complaint may be resolved informally by the person in charge of the Bureau in accordance with the procedures in this section at any time during the course of or after an investigation,

Where
complaint
to continue

(5) Notwithstanding subsection (1), where the Commissioner is of the opinion that the informal resolution was obtained as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue and give reasons therefor in writing to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Sec. 11 (5)

POLICE FORCE COMPLAINTS

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7

(6) The decision of the Commissioner under subsection (5) shall be deemed to be made in the exercise of a statutory power of decision within the meaning of the *Judicial Review Procedure Act*.

Review of
decision
R.S.O. 1980,
c. 224

(7) A complaint may be resolved informally by the Commissioner in accordance with the procedures in this section at any time during the course of an investigation or review by the Commissioner.

Informal
resolution by
Commis-
sioner

(8) No reference shall be made in the personal record of a subject officer to a complaint resolved under this section, except where misconduct has been admitted by the subject officer. 1984, c. 63, s. 10.

No reference
in personal
record of
subject
officer

11.—(1) Where a complaint is not resolved informally, the person in charge of the Bureau shall cause an investigation to be made forthwith into the complaint in accordance with prescribed procedures.

Investigation

(2) The person in charge of the Bureau shall forward to the Commissioner, the complainant and the subject officer an interim report in the prescribed form providing a summary of the investigation to date not later than thirty days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation.

Interim
reports

(3) Notwithstanding subsection (2), the person in charge of the Bureau may decide not to make a report to the complainant or the subject officer where, in his opinion, to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the Bureau shall forthwith notify the Commissioner of the reasons for his decision.

Exception

(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report in the prescribed form to be prepared and shall forward a copy thereof to the Commissioner, the chief of police, the complainant and the subject officer.

Final
report

(5) A final investigation report prepared under subsection (4) shall,

Idem

- (a) contain a summary of the complaint and a description of the alleged misconduct by the subject officer;

- (b) contain a summary of the investigation and of information obtained from the complainant, the subject officer and witnesses, if any; and
- (c) contain a description and analysis of any physical evidence obtained.

Further investigation at request of Commissioner

(6) The Commissioner may, upon receipt of a final investigation report, request that the chief of police cause further investigation to be made into the complaint and the results of any such investigation shall be forwarded to the Commissioner. 1984, c. 63, s. 11.

Withdrawal of complaint

12.—(1) All complaints and inquiries shall be dealt with in accordance with this Act, and shall not be withdrawn except in accordance with this Act.

Notice

(2) A complainant may withdraw a complaint at any time by giving notice, in the prescribed form, to the person in charge of the Bureau, who shall forward a copy thereof to the Commissioner and the subject officer.

Where to continue as complaint

(3) Notwithstanding subsection (2), where the Commissioner is of the opinion that the complainant withdrew the complaint as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue, and give reasons therefor, in writing, to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Review of decision

R.S.O. 1980, c. 224

(4) The decision of the Commissioner to cause the complaint to continue shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Disciplinary action under R.S.O. 1980, c. 381

(5) Notwithstanding subsection (2), where a complaint has been withdrawn by a complainant, such withdrawal shall not prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder and the chief of police shall notify the Commissioner if any such action is taken and the result thereof. 1984, c. 63, s. 12.

Where complaint not to be dealt with

13.—(1) Where it appears to the chief of police that,

- (a) a complaint is frivolous, vexatious or made in bad faith;

- (b) a complaint is not within the jurisdiction of this Act;
or
- (c) a complaint is one that could or should be more
appropriately dealt with under an Act other than
this Act,

the chief of police may decide that the complaint or any part
thereof not be dealt with under this Act.

(2) The chief of police shall notify the Commissioner, the
complainant and the subject officer of any decision made
under subsection (1). Notice

(3) Notwithstanding subsection (1), the decision of the
chief of police shall not prevent the chief from taking any disci-
plinary action that he could otherwise take under the *Police*
Act and the regulations thereunder. Disciplinary
action under
R.S.O. 1980,
c. 381

(4) The complainant may, within thirty days of receiving
notification under subsection (2), request the Commissioner
to review the decision made under subsection (1), in which
case all the provisions of this Act relating to a review by the
Commissioner apply with necessary modifications. Review by
Commis-
sioner

(5) Notwithstanding subsection (4), where the Commis-
sioner is satisfied that there are reasonable grounds for grant-
ing an extension, the Commissioner may extend the time for
requesting a review. 1984, c. 63, s. 13. Extension
of time

14.—(1) The chief of police shall review a final investiga-
tion report and he may order such further investigation as he
considers advisable and may, unless he decides that no action
is warranted, Powers and
duties of
chief of
police

- (a) cause an information alleging the commission of an
offence by the subject officer to be laid and refer
the matter to the Crown attorney for prosecution;
- (b) order that one or more of the allegations contained
in the complaint be heard by a board of inquiry;
- (c) cause disciplinary proceedings to be taken under the
Police Act and the regulations thereunder; and R.S.O. 1980,
c. 381
- (d) after giving the subject officer ten working days to
reply, either orally or in writing, to the complaint,
counsel or caution the subject officer regarding his
conduct,

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POLICE FORCE COMPLAINTS

Sec. 14 (1)

but where the chief of police takes action under clause (b), (c) or (d), he shall not take action under any other of those clauses.

Hearing
not stayed

R.S.O. 1980,
c. 381

(2) Where the chief of police causes an information to be laid under clause (1) (a), such action shall not stay any disciplinary proceedings under the *Police Act* or any hearing by a board of inquiry unless the presiding officer or the board, as the case may be, is of the opinion that the hearing should be stayed until the court proceedings have been concluded.

Review by
Commissioner

(3) A subject officer may within thirty days of the taking of any action under clause (1) (d), request the Commissioner to review the action, in which case all the provisions of this Act relating to a review by the Commissioner shall apply with necessary modifications.

Extension
of time

(4) Notwithstanding subsection (3), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review.

Expunging
from
personal
record

(5) Any action taken under clause (1) (d) shall be expunged from the personal record of the subject officer upon the expiration of a period of two years during which no other disciplinary action has been noted on the record.

Notice of
action taken

(6) The chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Commissioner, the complainant and the subject officer and, where his decision is that no action is warranted or he has taken action under clause (1) (d), the chief of police shall give his reasons therefor.

Designation
by chief
of police

(7) The chief of police may designate any police officer of the rank of inspector or higher to exercise any of his powers and perform any of his duties under this Act and the police officer so designated has the powers and duties set out in the designation and where any power is conditional on the opinion of the chief of police, the requisite opinion shall be that of the police officer so designated. 1984, c. 63, s. 14.

Application
of s. 23
R.S.O. 1980,
c. 381

15.—(1) Where the chief of police has caused disciplinary proceedings to be taken under the *Police Act* and the regulations thereunder, subsections 23 (6), (8), (13), (14) and (15) of this Act apply with necessary modifications to a hearing held in connection with such proceedings.

(2) The chief of police or, if he is not the person who holds a hearing referred to in subsection (1), the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the Commissioner, the complainant and the subject officer. 1984, c. 63, s. 15.

Notice of
decision

16. Where a hearing referred to in subsection 15 (1) has been held and a penalty has been imposed upon a subject officer, the officer may appeal in accordance with the provisions of this Act and not as provided in the *Police Act* and the regulations thereunder. 1984, c. 63, s. 16.

Police officer
may appeal

R.S.O. 1980,
c. 381

17.—(1) A notice of appeal under section 16 shall be served on the Commissioner and the chief of police within fifteen days after the subject officer receives notice of the penalty imposed, and the Commissioner shall notify the complainant forthwith.

Notice of
appeal

(2) Where a notice of appeal is filed after the time set out in subsection (1), the Commissioner shall assign, in accordance with the regulations, the matter to a member of the panel appointed on a recommendation made under subsection 4 (2) who may, if satisfied that there are reasonable grounds for doing so, extend the time for appealing and give such directions as he considers proper consequent upon the extension. 1984, c. 63, s. 17.

Extension
of time

18.—(1) Notwithstanding any other provision of this Act, the Commissioner may investigate the allegations in the complaint,

Commis-
sioner
may
investigate

- (a) at any time after he receives the first interim report under subsection 11 (2) or the thirty-day period mentioned therein has expired;
- (b) upon the request of the chief of police; or
- (c) where he has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 11.

(2) A decision to take action under clause (1) (c) shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Review of
decision

R.S.O. 1980,
c. 224

(3) The Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an investigation under clause (1) (a) or (c) and shall give his reasons therefor in writing.

Notice
to chief
of police

Idem

(4) Where the Commissioner conducts an investigation under subsection (1), he shall forward to the complainant, the subject officer, the person in charge of the Bureau and the chief of police an interim report in the prescribed form providing a summary of the investigation to date, not later than thirty days after he has given notification of his intention to conduct an investigation, and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation, and upon the completion of his investigation he shall prepare a final investigation report and forward a copy thereof to the same persons.

Notice of
action taken

(5) The chief of police, upon receipt of a final investigation report under subsection (4), shall review the report, together with any final investigation report prepared under subsection 11 (4), and shall make a decision in accordance with section 14 and shall notify all persons in accordance with subsection 14 (6).

Delegation

(6) The Commissioner may designate any person appointed under subsection 3 (3) to exercise any of his powers and perform any of his duties under this Act, and the person so designated has the powers and the duties set out in the designation, and where any power is conditional upon the opinion of the Commissioner, the requisite opinion shall be that of the designated person. 1984, c. 63, s. 18.

Request
for review

19.—(1) Where a complainant is dissatisfied with the decision made on a disciplinary proceeding arising out of his complaint that is not a decision of a board of inquiry or with action taken by the chief of police under clause 14 (1) (d) or with a decision of the chief of police that no action is warranted, he may within thirty days of receipt of notification under subsection 14 (6) or 15 (2) request the Commissioner to review the matter.

Extension
of time

(2) Notwithstanding subsection (1), where the Commissioner is satisfied that there are reasonable grounds for granting an extension the Commissioner may extend the time for requesting a review.

Hearing may
be ordered

(3) Where the Commissioner receives a request under subsection (1), he shall review the matter and may, after such review, order a hearing by a board of inquiry if he believes that, in the public interest, such a hearing is required or he may decide to take no further action.

Notice

(4) The Commissioner shall give forthwith written notice to the chief of police, the complainant and the subject officer of

his decision under subsection (3) and, where his decision is to take no further action, shall give his reasons therefor.

(5) Where a subject officer has appealed under section 16 a hearing ordered under subsection (3) shall be heard together with that appeal. 1984, c. 63, s. 19. Where
appeal under
s. 16

20.—(1) For the purposes of an investigation under section 18 or a review under section 19, the Commissioner may, where he has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, after informing the chief of police, enter a police station and examine therein books, papers, documents and things related to the complaint. Powers on
investigation
or review

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation or review as if it were an inquiry under that Act. Powers on
inquiry
R.S.O. 1980,
c. 411

(3) The Commissioner may, in writing, appoint a person to make any investigation or review he is authorized to make and the person so appointed has all the powers and duties of the Commissioner relating to the investigation and the review. Appointment
of person
to make
investigation
or review

(4) The Commissioner shall issue a certificate of appointment to any person appointed to make an investigation or review under subsection (3), which certificate shall contain a photograph of the person appointed, and the person appointed, while exercising any powers or performing any duties in respect of the investigation or review, shall produce the certificate of appointment upon request. Identification

(5) The person appointed to make an investigation or review shall report the results of his investigation or review to the Commissioner. Report

(6) No person shall obstruct the Commissioner or a person appointed by him to make an investigation or review or withhold from him or conceal or destroy any books, papers, documents or things related to the investigation or review. Obstruction

(7) Where a justice of the peace is satisfied upon an *ex parte* application by the Commissioner or by a person appointed by him under subsection (3) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to an investigation or review, the justice of the peace may issue an order authorizing the person making the application, together with such persons as he calls upon to assist Search
warrant

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POLICE FORCE COMPLAINTS

Sec. 20 (7)

him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between 6 a.m. and 9 p.m., standard time, unless the justice of the peace, by the order, otherwise authorizes.

Removal of
books, etc.

(8) The Commissioner may, upon giving a receipt therefor, remove any books, papers, documents or things examined under subsection (1) or (7) relating to the investigation or review and shall with reasonable dispatch cause to be made copies of such books, papers or documents and return them promptly thereafter to the person from whom they were removed.

Admissibility
of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the Commissioner is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

Appointment
of experts

(10) The Commissioner may appoint an expert to examine books, papers, documents or things examined under subsection (1) or (7). 1984, c. 63, s. 20.

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the Metropolitan Board of Commissioners of Police shall forward such report along with their comments and any comments submitted to them by the chief of police or the Metropolitan Toronto Police Association, to the Attorney General, the Solicitor General and the Commissioner. 1984, c. 63, s. 21.

Where board
of inquiry to
be
constituted

22.—(1) Where,

- (a) the chief of police has ordered that a matter be heard by a board of inquiry;
- (b) a police officer has appealed under section 16; or
- (c) the Commissioner has, under subsection 19 (3), ordered a hearing,

a board of inquiry shall be constituted in accordance with this section.

(2) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a minor nature, he shall assign, in accordance with the regulations, a member of the panel who was appointed on a recommendation made under subsection 4 (2) to sit alone to conduct the hearing.

Assignment
to board
of inquiry

(3) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a serious nature, he shall assign, in accordance with the regulations, three members of the panel to conduct the hearing.

Idem

(4) Where, following a disciplinary hearing under the *Police Act* a board of inquiry is to be constituted, the board shall be constituted in accordance with subsection (3).

Constitution
of board
R.S.O. 1980,
c. 381

(5) The chairman of a board of inquiry constituted under subsection (3) or (4) shall be a person appointed to the panel on a recommendation made under subsection 4 (2), one member shall be a person appointed to the panel on a recommendation made under subsection 4 (3) and one member shall be a person appointed to the panel on a recommendation made under subsection 4 (4).

Who shall be
on board

(6) The chief of police, where he has ordered a hearing, and the Commissioner, where he has ordered a hearing, shall provide the parties with a concise statement of the allegations of misconduct to be heard by the board.

Statement
of alleged
misconduct

(7) Where, following a hearing referred to in subsection 15 (1), a board of inquiry has been constituted, the chief of police shall forward the record of that hearing, including the transcript, all documents, evidence and exhibits considered at that hearing, to the board.

Record

(8) Where the Commissioner has ordered the hearing he shall pay the costs of preparing the record. 1984, c. 63, s. 22.

Costs of
record

16 Chap. 63 POLICE FORCE COMPLAINTS Sec. 23 (1)

When
hearing
de novo and
when on
record

23.—(1) The hearing before the board of inquiry shall be *de novo*, except where the chief of police has prepared a record under subsection 22 (7), in which case the hearing shall be on the record but the board may, in special circumstances, hear such evidence as the board considers advisable.

Parties

(2) The parties to a hearing shall include,

- (a) the chief of police, in respect of appeals instituted by the subject officer under section 16; and
- (b) the Attorney General, except where an appeal has been instituted by the subject officer under section 16.

Adding
parties

(3) A party may be added by the board at any stage of the hearing upon such terms as the board considers proper.

Attorney
General to
have carriage

(4) The Attorney General, where he is a party to the hearing, has carriage of the matter.

Notice of
hearing

(5) The board shall appoint a time for a hearing and give written notice thereof to the parties.

Opportunity
to examine
evidence

(6) The subject officer and the complainant shall be afforded an opportunity to examine before the hearing any physical or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Board not
to
communicate
with party

(7) The board conducting a hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Oral
evidence

(8) The oral evidence given at the hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Adjournment
for view

(9) The board may, where it appears to be in the interests of justice, direct that the board and the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Only
members at
hearing to
participate
in decision

(10) No member of the board shall participate in a decision following the hearing unless he was present throughout the

hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision shall be given unless all members so present participate in the decision.

(11) A decision of a member of a board of inquiry sitting alone and a decision of a majority of the members of a board comprising three members is a decision of the board.

Decision

(12) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him within a reasonable time after the matter in issue has been finally determined.

Release of documents

(13) Notwithstanding section 12 of the *Statutory Powers Procedure Act*, the subject officer shall not be required to give evidence at the hearing nor shall any statement or answer required to be given by him in respect of the complaint made against him be admitted in evidence at the hearing, except with his consent.

Police officer not required to give evidence
R.S.O. 1980, c. 484

(14) Where the person in charge of the Bureau or the Commissioner attempts to resolve a complaint informally and the complaint is not so resolved, any statement or admission made during such attempt by the subject officer or by the complainant shall not be admitted in evidence at the hearing, except with the consent of the subject officer or the complainant, as the case may be.

Statement or admission not admissible in evidence

(15) No finding of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt.

Proof of misconduct

(16) Where a board constituted under subsection 22 (2) finds the subject officer guilty of misconduct, it may,

Imposition of penalty

(a) direct that days off not exceeding five days be forfeited;

(b) direct that pay not exceeding three days pay be forfeited; or

(c) reprimand the police officer.

(17) Where a board constituted under subsection 22 (3) finds the subject officer guilty of misconduct, it may,

Idem

(a) dismiss the police officer from the Metropolitan Police Force, whereupon the officer is thereby dismissed;

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Chap. 63

POLICE FORCE COMPLAINTS

Sec. 23 (17)

- (b) direct that the police officer resign from the Metropolitan Police Force and, in default of resigning within seven days, be summarily dismissed;
- (c) reduce the police officer in rank or gradation of rank and in pay in accordance with the rank to which he is reduced;
- (d) direct that days off not exceeding twenty days be forfeited;
- (e) direct that pay not exceeding five days pay be forfeited; or
- (f) reprimand the police officer, which reprimand may be in lieu of or in addition to any other penalty imposed.

Notice of
decision

(18) The board shall give forthwith written notice of its decision and the reasons therefor to the chief of police, the complainant, the subject officer, the Commissioner, the Solicitor General and the Attorney General.

No reference
to hearing

(19) No reference to a hearing conducted by the board shall be made in the personal record of the subject officer unless the board has made a finding of misconduct.

Costs may
be paid

(20) The Metropolitan Board of Commissioners of Police may, in such cases and to such extent as it thinks fit, pay any legal costs incurred by a subject officer in respect of a hearing conducted by a board and an appeal under section 24. 1984, c. 63, s. 23.

Appeal

24.—(1) A party to a hearing by a board may appeal within thirty days of the decision of the board to the Divisional Court.

Solicitor
General and
Attorney
General
entitled to
be heard

(2) The Solicitor General, and the Attorney General where he is not entitled to appeal under subsection (1), are entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

What may
be appealed

(3) An appeal under this section may be made on a question that is not a question of fact alone or from a penalty imposed under subsection 23 (17), or on both the question and the penalty. 1984, c. 63, s. 24.

How notice,
etc., may
be served

25. Any notice, report or other material required to be given, furnished, forwarded or otherwise served under this Act is sufficiently served if delivered personally or sent by

prepaid first class mail addressed to the person on whom service is required to be made at his last known or usual place of abode. 1984, c. 63, s. 25.

26.—(1) Every person engaged in the administration of this Act and the regulations, including a member of the Metropolitan Police Force, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties and shall not communicate any such matter to any other person except,

Matters
confidential

(a) as may be required in connection with the administration of this Act and the regulations or the *Police Act* and the regulations thereunder;

R.S.O. 1980,
c. 381

(b) as may be required for the due enforcement of the law;

(c) to his counsel; or

(d) with the consent of the person to whom the matter relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

Testimony

(3) No record, report, writing or document arising out of a complaint is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

What is
inadmissible
in evidence

(4) No oral statement, answer or admission referred to in subsections 23 (13) and (14) is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder. 1984, c. 63, s. 26.

Idem

R.S.O. 1980,
c. 381

27. Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to a board hearing. 1984, c. 63, s. 27.

Application
of 1984,
c. 11, s. 146

28. The *Ombudsman Act* does not apply to anything done under this Act. 1984, c. 63, s. 28.

R.S.O. 1980,
c. 325 does
not apply

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Chap. 63

POLICE FORCE COMPLAINTS

Sec. 29

Agreement
for
contributions

29. The Attorney General, with the approval of the Lieutenant Governor in Council, and The Municipality of Metropolitan Toronto may enter into an agreement to provide for the payment by the municipality to the Treasurer of Ontario on such terms and conditions as may be agreed upon of contributions in respect of the moneys required for the purposes of this Act. 1984, c. 63, s. 29.

Offence

30. Any person who contravenes subsection 20 (6), subsection 26 (1) or section 27 is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. 1984, c. 63, s. 30.

Regulations

31. The Lieutenant Governor in Council may make regulations,

- (a) respecting the reporting and publication of decisions of boards of inquiry;
- (b) assigning duties to the Commissioner;
- (c) establishing a system that provides for the assignment of panel members on a rotational basis;
- (d) prescribing forms and providing for their use; and
- (e) prescribing any matter that by this Act is required to be or is referred to as prescribed. 1984, c. 63, s. 31.

Advisory
committee

32.—(1) There shall be a committee composed of,

- (a) the Deputy Attorney General;
- (b) the Deputy Solicitor General;
- (c) the chairman of the Ontario Police Commission;
- (d) the Commissioner;
- (e) the Assistant Deputy Attorney General-Criminal Law; and
- (f) such other persons as may be jointly appointed by the Attorney General and the Solicitor General.

Duties

(2) It is the duty of the committee,

- (a) to maintain under review the practice and procedures under this Act;

- (b) to receive and consider matters brought to the attention of the committee by any person having an interest in the operation of the system for handling complaints under this Act;
- (c) to make such recommendations as the committee considers appropriate for the improvement of the system for handling complaints; and
- (d) to perform such other duties or functions as the committee may be requested to perform by the Attorney General or the Solicitor General.

(3) Any recommendations made under clause (2) (c) shall be forwarded by the committee to both the Attorney General and the Solicitor General. 1984, c. 63, s. 32. Recommendations

33. On or before the day that is three years after the day this Act comes into force, the Attorney General shall, after having reviewed the operation of the panel, the Board and the advisory committee referred to in sections 4 and 32 respectively, recommend to the Lieutenant Governor in Council whether those bodies should continue in existence or be terminated. 1984, c. 63, s. 33. Recommendation of Attorney General

Repeal 34.—(1) The *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43, is repealed.

Proceedings continued under 1981, c. 43 (2) Notwithstanding subsection (1), the *Metropolitan Police Force Complaints Project Act, 1981* shall continue in force and apply to a complaint that is made before the day this Act comes into force, for the purpose of continuing the proceedings in respect of that complaint, but the proceedings at any Board hearing commenced after the day this Act comes into force shall be in accordance with the provisions of this Act.

35. This Act comes into force on the 21st day of December, 1984. Commencement

36. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Act, 1984*. Short title

ONTARIO REGULATION 494/85

under the Metropolitan Toronto Police Force Complaints Act, 1984

GENERAL FORMS

1. A complaint shall be recorded in Form 1. O. Reg. 494/85, s. 1.
2. The subject officer shall be informed of the substance of the complaint in Form 1A. O. Reg. 494/85, s. 2.
3. The statement to be furnished under subsection 6 (2) of the Act to the person making the complaint shall be in Form 2. O. Reg. 494/85, s. 3.
4. A record of an informal resolution of a complaint shall be in Form 3. O. Reg. 494/85, s. 4.
5. An interim or final investigation report under subsection 11 (2), 11 (4) or 18 (4) of the Act shall be in Form 4. O. Reg. 494/85, s. 5.
6. A notice of withdrawal of a complaint shall be in Form 5. O. Reg. 494/85, s. 6.

BUREAU INVESTIGATIONS

7. An investigation under section 11 of the Act shall be pursued quickly and diligently and the investigator shall endeavour to obtain all information that may have a bearing on the complaint. O. Reg. 494/85, s. 7.
8. All information and evidence obtained in the investigation shall be recorded and preserved. O. Reg. 494/85, s. 8.
9. The investigator shall endeavour to interview the person making the complaint and the subject officer and to obtain written statements from them. O. Reg. 494/85, s. 9.
10. The investigator shall endeavour to interview the witnesses named by the person making the complaint and the subject officer and witnesses located as a result of the investigation and to obtain written statements from such witnesses. O. Reg. 494/85, s. 10.
11. The investigator shall endeavour to obtain photographs of all personal injuries or damage to property alleged and any other information and evidence that is relevant to the investigation and could only be preserved by way of photographs. O. Reg. 494/85, s. 11.
12. Where appropriate, the investigator shall attend at the scene of the alleged misconduct and obtain any relevant evidence. O. Reg. 494/85, s. 12.

13. The investigator shall endeavour to obtain all hospital records and medical reports related to the complaint. O. Reg. 494/85, s. 13.

14. The investigator shall make notes during or as soon as possible after completion of each investigative step and the notes shall be preserved. O. Reg. 494/85, s. 14.

15. Any information, notes or evidence, except physical evidence, that is required to be preserved under sections 8 and 14 shall be retained for a period of two years after the complaint is finally disposed of. O. Reg. 494/85, s. 15.

ASSIGNMENT OF PANEL MEMBERS

16. The Commissioner shall prepare three lists of names of persons appointed to the panel under subsection 4 (1) of the Act; one consisting of those persons recommended under subsection 4 (2) of the Act; one consisting of those persons recommended under subsection 4 (3) of the Act and one consisting of those persons recommended under subsection 4 (4) of the Act. O. Reg. 494/85, s. 16.

17. For the purposes of sections 17 and 22 of the Act, the Commissioner shall assign, to consider extending time to appeal or to conduct a hearing, as the case may be, the person whose name appears at the beginning of the appropriate list or lists. O. Reg. 494/85, s. 17.

18. The name of a person assigned to conduct a hearing shall, following such assignment, be removed from the beginning of the list and added to the end of the list. O. Reg. 494/85, s. 18.

19. If a person is unable to perform his or her duties or is unable to act within a time determined by the Commissioner to be reasonable, the Commissioner, upon being so informed, shall assign as a replacement the next person on the list, and the name of the person who is so replaced shall remain at the beginning of the list. O. Reg. 494/85, s. 19.

20. If, at any time, a person resigns as a member of the panel, the name of that person shall be deleted from the appropriate list. O. Reg. 494/85, s. 20.

21. If, at any time, a new person is appointed to the panel, the name of that person shall be placed at the end of the appropriate list. O. Reg. 494/85, s. 21.

Schedule

CODE OF OFFENCES

I. Any chief of police, other police officer or constable commits an offence against discipline if he is guilty of,

(a) DISCREDITABLE CONDUCT, that is to say, if he,

- (i) acts in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force,
- (ii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,
- (iii) uses profane, abusive or insulting language to any other member of a police force,
- (iv) wilfully or negligently makes any false complaint or statement against any member of a police force,
- (v) assaults any other member of a police force,
- (vi) withholds or suppresses a complaint or report against a member of a police force,
- (vii) is guilty of an indictable offence or an offence punishable upon summary conviction under the *Criminal Code* (Canada), or
- (viii) contravenes any provision of the *Police Act* or the regulations;

(b) INSUBORDINATION, that is to say, if he,

- (i) is insubordinate by word, act or demeanour, or
- (ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order;

(c) NEGLIGENCE OF DUTY, that is to say, if he,

- (i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force,

(ii) idles or gossips while on duty,

(iii) fails to work in accordance with orders, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause,

(iv) by carelessness or neglect permits a prisoner to escape,

(v) fails, when knowing where an offender is to be found, to report him or to make due exertions for bringing him to justice,

(vi) fails to report a matter that it is his duty to report,

(vii) fails to report anything that he knows concerning a criminal or other charge, or fails to disclose any evidence that he, or any person within his knowledge, can give for or against any prisoner or defendant,

(viii) omits to make any necessary entry in any official document or book,

(ix) feigns or exaggerates sickness or injury to evade duty,

(x) is absent without leave from or late for parade, court or any other duty, without reasonable excuse, or

(xi) is improperly dressed, dirty or untidy in person, clothing or equipment while on duty;

(d) DECEIT, that is to say, if he,

(i) knowingly makes or signs a false statement in an official document or book,

(ii) wilfully or negligently makes a false, misleading or inaccurate statement pertaining to official duties, or

(iii) without lawful excuse destroys or mutilates an official document or record or alters or erases an entry therein;

(e) BREACH OF CONFIDENCE, that is to say, if he,

(i) divulges any matter which it is his duty to keep secret,

(ii) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the

lawful execution of such warrant or service of such summons,

- (iii) without proper authority communicates to the public press or to any unauthorized person any matter connected with the police force,
 - (iv) without proper authority shows to any person not a member of the police force or any unauthorized member of the force any book, or written or printed paper, document or report that is the property of the police force,
 - (v) makes any anonymous communication to the chief of police or superior officer or authority,
 - (vi) canvasses, except as authorized by the Act or the regulations, any person in respect of a matter concerning the police force,
 - (vii) signs or circulates a petition or statement in respect to a matter concerning the police force, except through the proper official channel or correspondence or established grievance procedure, or
 - (viii) calls or attends any unauthorized meeting to discuss any matter concerning the police force;
- (f) CORRUPT PRACTICE, that is to say, if he,
- (i) takes a bribe,
 - (ii) fails to account for or to make a prompt, true return of money or property received in an official capacity,
 - (iii) directly or indirectly solicits or receives a gratuity, present, pass, subscription or testimonial without the consent of the chief of police,
 - (iv) places himself under a pecuniary or other obligation to a licensee concerning the granting or refusing of whose licence a member of the police force may have to report or give evidence,
 - (v) improperly use his character and position as a member of the police force for private advantage,
 - (vi) in his capacity as a member of the police force writes, signs or gives,

without the consent of the Chief of Police, a reference or recommendation to a member or former member of the police force, or any other police force, or

- (vii) without the consent of the chief of police, supports in any way an application for a licence of any kind;
- (g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, that is to say, if he,
 - (i) without good and sufficient cause makes an unlawful or unnecessary arrest,
 - (ii) uses any unnecessary violence to a prisoner or other person contacted in the execution of duty, or
 - (iii) is uncivil to a member of the public;
- (h) DAMAGE TO CLOTHING OR EQUIPMENT, that is to say, if he,
 - (i) wilfully or carelessly causes waste, loss or damage to any article of clothing or equipment, or to any book, document or other property of the police force, or
 - (ii) fails to report waste, loss or damage however caused;
- (i) CONSUMING INTOXICATING LIQUOR IN A MANNER PREJUDICIAL TO DUTY, that is to say, if he,
 - (i) while on duty is unfit for duty through drinking intoxicating liquor, or
 - (ii) reports for duty and is unfit for duty through drinking intoxicating liquor, or
 - (iii) except with the consent of a superior officer or in the discharge of duty, drinks or receives from any other person intoxicating liquor on duty, or
 - (iv) demands, persuades or attempts to persuade another person to give or purchase or obtain for a member of the police force any intoxicating liquor, while on duty;
- (j) LENDING MONEY TO A SUPERIOR; OR
- (k) BORROWING MONEY FROM OR ACCEPTING A PRESENT FROM ANY INFERIOR IN RANK.

2. Any chief of police, other police officer or constable also commits an offence against discipline and shall be liable to punishment as provided in the regulations, if he connives at, abets or is knowingly an accessory to any offence against discipline under this code. R.R.O. 1980, Reg. 791, Sched.

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- A56



**EIGHTH
ANNUAL REPORT
OF THE OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER**



1989



**EIGHTH
ANNUAL REPORT
OF THE OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER**

OFFICE OF THE PUBLIC
COMPLAINTS COMMISSIONER

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May 7, 1990

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Dear Mr. Attorney and Mr. Solicitor General:

Pursuant to Section 3(7) and Section 3(8) of the
Metropolitan Toronto Police Force Complaints Act, 1984, I am pleased
to enclose herein the Eighth Annual Report of the Office of the
Public Complaints Commissioner.

Sincerely,

CLARE LEWIS
Public Complaints Commissioner

sp
encl.

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PART I

Overview of Complaints System; Expansion of System

PART I - OVERVIEW OF COMPLAINTS SYSTEM;
EXPANSION OF SYSTEM

A. AN OVERVIEW

The Office of the Public Complaints Commissioner began operations in 1981 pursuant to provisions of the Metropolitan Police Force Complaints Project Act, 1981. That Act was replaced by the Metropolitan Toronto Police Force Complaints Act, 1984, which became law on December 21, 1984, and which is included here as Appendix B.

A basic premise of the system is that the police force has the responsibility of performing initial investigation into complaints by members of the public. The vast majority of complaints are investigated initially by the police. The Act states that the Commissioner can take over an investigation on request of the Chief of Police, or when the Commissioner has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of the investigation, or at any time 30 days or more after the complaint has been filed. A significant part of the

Commissioner's function, therefore, is not initial investigation but, rather, the monitoring of the police investigation into the complaint. The Commissioner also undertakes review and re-investigation of the complaint at the request of the complainant after the Chief of Police has reached a decision on the complaint.

The monitoring function is possible because the Commissioner receives a copy of all complaints as soon as they are filed, as well as a copy of all monthly investigative reports as they are completed. The Commissioner maintains ongoing communication with the Public Complaints Investigation Bureau of the Force in regard to general issues pertaining to investigation as well as with reference to particular files.

If the complainant requests a review, the Public Complaints Commissioner can re-investigate the matter, and must make a decision about the complaint on the basis of the available evidence. If the Commissioner agrees with the decision of the Chief of Police, a review report is written and sent to the complainant, the subject officer, and the Chief of Police. Whether the Commissioner agrees

or disagrees with the Chief of Police, recommendations may be made to prevent the problem encountered by the complainant from recurring. Finally, if the Commissioner believes it is required in the public interest, the case may be sent to a Board of Inquiry. The Commissioner has no further decision-making power in such cases.

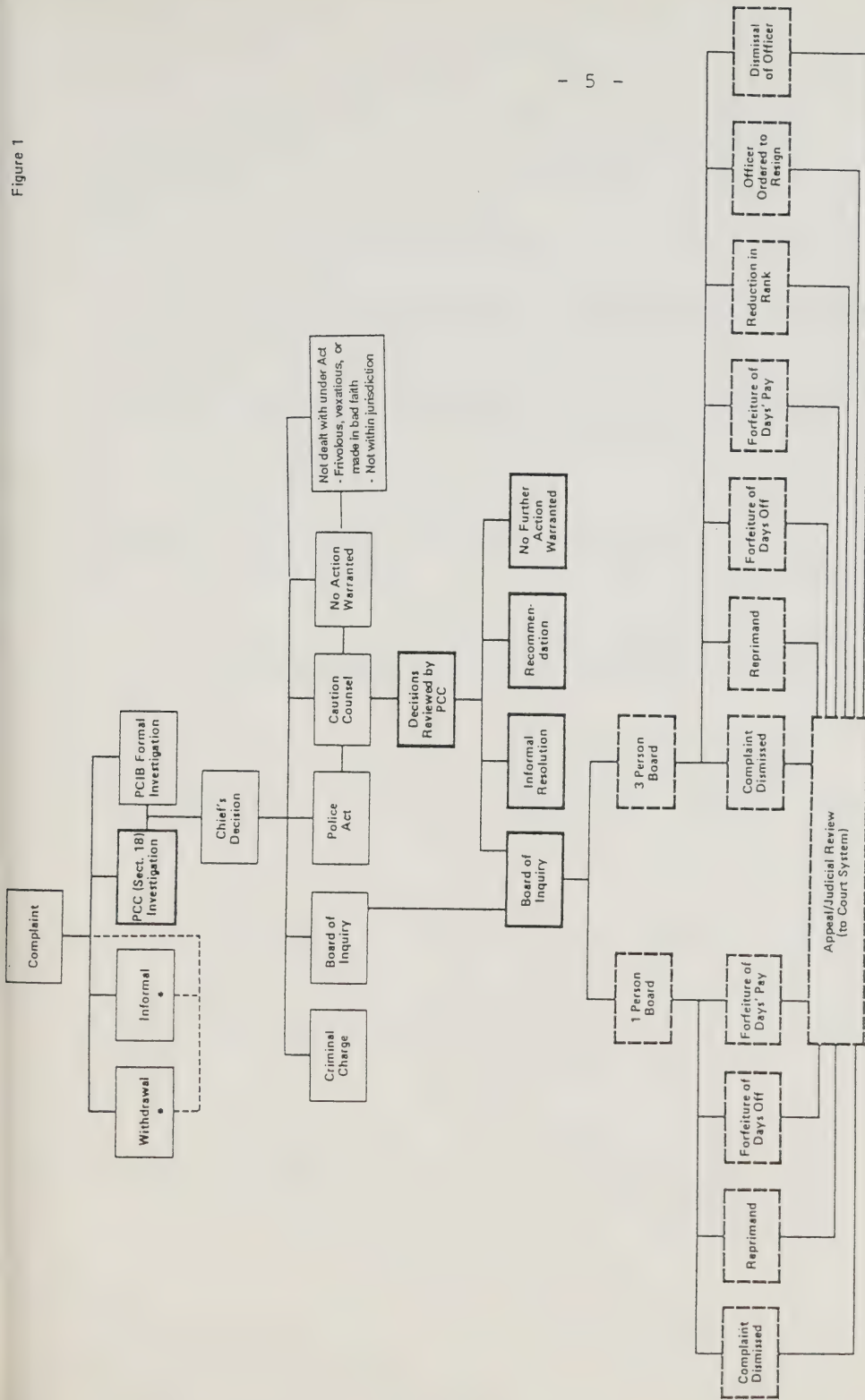
The Board of Inquiry tribunal consists of either one or three civilians depending on whether the complaint is minor or serious. The Board has the responsibility of holding a hearing into the complaint. The officer is usually represented by counsel and the complainant may also be represented. A lawyer representing the Attorney General presents the case, witnesses are called, evidence is tendered, and arguments of law are made. The legislation provides that misconduct can be established only if proved beyond a reasonable doubt. At the end of the hearing, the Board decides whether the officer is guilty of misconduct. If the Board concludes that the officer is guilty of misconduct, it may discipline the officer. Penalties range from a reprimand to dismissal from the police force.

The chart in Figure 1 shows the possible stages of a complaint. These stages can be roughly divided into the

police investigation and resolution stage, the Public Complaints Commissioner review stage, and the Board of Inquiry stage.

Please note that in the interest of clarity, the chart illustrates only the most commonly occurring events in the complaint system.

Figure 1



— Area handled by Police

— Area handled by Public Complaints Commissioner

--- Area handled by Board of Inquiry

* When a complaint is withdrawn or informally resolved, the Commissioner reviews the file and, in certain circumstances, has the power to overturn the withdrawal or the informal resolution. In these cases, the complaint continues through the system

B. EXPANSION OF THE SYSTEM

In November, 1987, legislation to permit province-wide expansion of the Office of the Public Complaints Commissioner was placed before the Legislature by the Attorney General and received first and second reading.

The Bill, An Act to Amend the Metropolitan Toronto Police Force Complaints Act, 1984, allowed any municipality in Ontario to choose to take advantage of the services of the Office of the Public Complaints Commissioner.

The Standing Committee on the Administration of Justice received submissions in Thunder Bay, Ottawa, Windsor and Toronto regarding the Bill.

The principle of expanding the system from Toronto to the province, including the Ontario Provincial Police, was supported by most of the presenters. However, the optional section of the Bill was criticised.

Most of the submissions, including some from police forces, associations and governing authorities suggested

that the expansion of the complaints process should be mandatory and include all municipal police forces in Ontario in addition to the Ontario Provincial Police.

This issue received further government consideration and, on December 20, 1989, Bill 107, An Act to Revise the Police Act and Amend the Law Relating to Police Services, (the Police Services Act, 1989) was introduced in the Legislature by the Solicitor General and received first reading.

Part VI of this Act establishes a mandatory system for the resolution of public complaints regarding the police for all police forces in the province, including the Ontario Provincial Police. Part VI of the Act will be administered by a Complaints Commissioner, who will report annually to the Attorney General. The proposed system contemplates the expansion of the Office of the Public Complaints Commissioner, under the new name of the Office of the Police Complaints Commissioner, to administer the process. With some modification, the system in force for Metropolitan Toronto is the basis for the mandatory province-wide expansion. The Act permits the Commissioner to establish regional offices throughout the province.

It is anticipated that the Act will be referred to The Standing Committee on the Administration of Justice for consideration. The Office of the Public Complaints Commissioner is, therefore, in the process of planning for expansion should the legislation become law.

PART II
Research and Statistics

PART II - RESEARCH AND STATISTICS

A. INTRODUCTION

Since its inception, the Office of the Public Complaints Commissioner has reported and analysed data taken from all closed complaint files, permitting the examination of the case-load from a statistical perspective. Careful analysis and study of complaints can also lead to suggestions for improving policing generally and to specific recommendations for change. In addition, the research enables the Commissioner to evaluate the functioning of the complaints process.

In 1989 there were 671 cases closed by the Office of the Public Complaints Commissioner. A "case" involves a single complainant making one or more allegations based on a single incident or series of incidents. A case is closed when all outstanding issues with respect to the allegations have been resolved. Because cases vary in complexity, they vary in duration. Some cases may be resolved quickly while others which require extensive investigation may last over a year.

B. RESEARCH DATA

1. The Incident

Every complaint results from an incident in which a member of the public has some contact with the Metropolitan Toronto Police Force. The first incident may evolve into more than one contact in more than one location. The location of the primary incident is shown in Table 1. The locations are listed by frequency of occurrence, with the most common being listed first. As in previous years, the most common location of the primary incident was the street (48.0%). The next most common location was a private residence (20.6%), followed by police buildings (13.4%).

TABLE 1

<u>Location of Incident</u>	<u>Number</u>	<u>Percent</u>
Street	322	48.0
Residence	138	20.6
Police Building	90	13.4
Public Place	87	13.0
Police Vehicle	15	2.2
Plaza/Mall	12	1.8
Schoolyard/Park	7	1.0
	<hr/>	<hr/>
TOTAL	671	100.0

A single incident may give rise to several allegations. The listing of allegations is presented in Table 2. The majority of complainants (59.9%) made more than one allegation. In total, 1,339 allegations were made. For each case, details of only the six most serious allegations were recorded.

There are two ways of examining the distribution of allegations. One way is by considering the total number of allegations. Thus, the 297 allegations of assault represent 22.2% of the 1,339 allegations that were documented. The other way is by considering the number of cases. Here the 297 allegations of assault represent 44.3% of the 671 cases. The percentage distributions are presented in Table 2 and Figure 2.

The 22 categories of allegations, grouped into four major areas, are presented in Table 2. The most common allegation is that officers failed to act according to proper police procedure (39.7%). This was followed by threatening or verbally abusive behaviour (34.0%) and by

physical assaults/excessive use of force (22.2%). Personal misuse of authority was cited in 4.1% of the allegations. For example, it was noted that in 34 or 5.1% of the cases, there was an allegation of improper use of the baton. These allegations included physical assault or improper threatening use of the baton. In 42 or 6.3% of the cases, complainants alleged improper handling of police firearms.

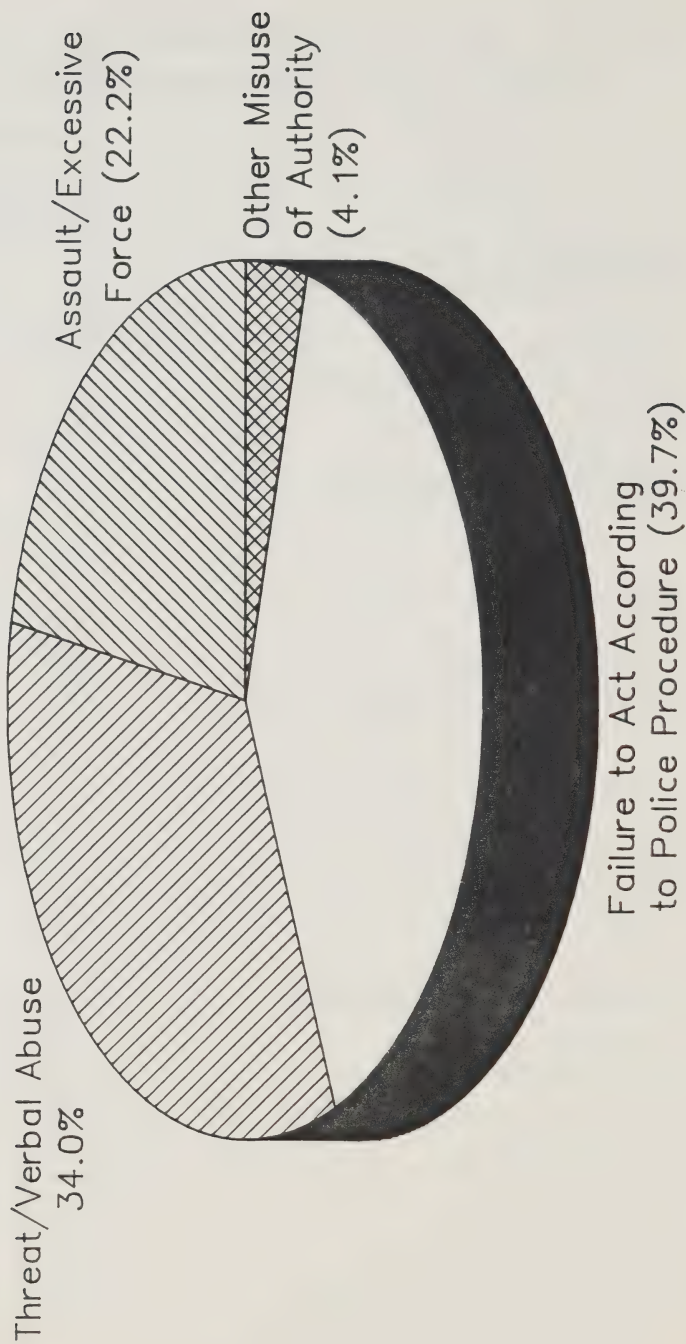
TABLE 2

TYPE OF ALLEGATION

(No. of Cases = 671)

	<u>Number</u>	<u>% of Allegations</u>	<u>% of Cases</u>
<u>Failure to Act According to Police Procedure</u>			
General	122	9.1	18.2
Neglect of Duty	120	9.0	17.9
Damage/Mishandle Property	78	5.8	11.6
Failure to I.D. Self	61	4.6	9.1
Improper Search/Entry	50	3.7	7.5
Improper Charge	49	3.7	7.3
Improper Arrest/Detention	39	2.9	5.8
Improper Use of Discretion	<u>12</u>	0.9	1.8
	531	(39.7)	
<u>Threat or Verbal Abuse</u>			
Incivility/Verbal Abuse	289	21.6	43.1
Harassment/Threat	145	10.8	21.6
Perceived Harassment/Threat	18	1.3	2.7
Verbal Sexual Harassment/Threat	<u>4</u>	0.3	0.6
	456	(34.0)	
<u>Physical Assault/Excessive Force</u>			
Assault with Injury	179	13.4	26.7
Assault	92	6.9	13.7
Assault while Restrained	23	1.7	3.4
Sexual Assault	<u>3</u>	0.2	0.5
	297	(22.2)	
<u>Other Misuse of Authority</u>			
Improper Driving	17	1.3	2.5
Theft/Corruption	14	1.1	2.1
Deceit	8	0.6	1.2
Breach of Confidence	6	0.4	0.9
Intoxication	6	0.4	0.9
Lying Under Oath	<u>4</u>	0.3	0.6
	55	(4.1)	
	<hr/>	<hr/>	
TOTAL	1,339	100.0	

Figure 2
Type of Allegation



The Commissioner, given the diverse ethnic and racial composition of Metropolitan Toronto, continues to be particularly concerned with any allegation of ethnic or racial bias by the police. In 53, or 7.9% of the complaints, there was some mention of a racial or ethnic statement being made. In a further 13, or 1.9% of the cases, a racial or ethnic statement was not alleged to have been made by the police, but the complainants stated that they perceived the treatment they received as racially or ethnically motivated.

The Commissioner believes that the low number of complaints alleging ethnic or racial bias is an entirely unreliable indicator of the current state of relations between the police and visible minority, particularly black, members of our community. There have been telling hearings of the Task Force on Race Relations and Policing, the Mayor's Committee on Race Relations and the Legislature's Standing Committee on the Administration of Justice. There have been public outcries following recent police shootings of black members of our community, and the trauma to police consequent on the laying of criminal charges against officers in these cases. The amount, nature, and frequency of protest from visible minority members of our community cannot be dismissed, and have made it abundantly clear that the formal complaints process is

not reflecting actual visible minority disaffection and sense of grievance. There are many impediments to the making of an official complaint by visible minority members of our community. Among those reported to the Commissioner are a continuing distrust of the process, and a perceived fear of recrimination.

The Office of the Public Complaints Commissioner continues its outreach efforts to minority communities and is seeking effective means to ensure better access to, and use of, the complaint system by all members of the public, to improve police and minority liaison and relations, and to alleviate some of these concerns.

In 6 or 0.9% of the cases there was some reference to a disparaging statement regarding homosexuality.

In describing the allegations, the actual incident which led to the contact between the complainant and the police was noted. It must be remembered that this notation represents the first point of contact; others may have occurred as the situation evolved. The three most common points of contact were traffic/accident investigation (27.3%), criminal investigation (27.3%) and arrest (22.1%). The remaining incidents are listed in Table 3.

TABLE 3

<u>Precipitating Factor</u>	<u>Number</u>	<u>Percent</u>
Traffic/Accident Investigation	183	27.3
Criminal Investigation	183	27.3
At Arrest	148	22.1
Domestic Incident	32	4.8
Parking Infraction	22	3.3
By-Law Infraction	9	1.3
Request for I.D.	5	0.7
Landlord/Tenant Issues	3	0.4
Other	13	1.9
None Apparent	<u>73</u>	<u>10.9</u>
TOTAL	671	100.0

In 316 or 47.1% of the cases, no charges were laid. The complainant was charged by the police in 337 or 50.2% of the cases. The details are presented in Table 4. In 98.8% of these cases, the charge was laid prior to the complaint being filed.

TABLE 4

<u>Charge Against Complainant</u>	<u>Number</u>	<u>Percent</u>
<u>Highway Traffic Act</u> Offence	152	29.5
Assault	58	11.2
Obstruct/Assault Police	55	10.7
Drug Offence	32	6.2
Theft/Possession of Stolen Goods	31	6.0
Alcohol Related Driving Offence	29	5.6
Property Offence	22	4.3
Liquor Offence	19	3.7
Weapons Offence	18	3.5
Robbery/Serious Violence	18	3.5
Cause a Disturbance/Breach of Peace	17	3.3
Municipal By-Law Offence	13	2.5
Escape/Breach Probation	10	1.9
Break & Enter and Related Offences	7	1.4
Criminal Driving Offence	7	1.4
Public Mischief	5	1.0
Other	<u>22</u>	<u>4.3</u>
TOTAL	515	100.0

There were 196 complainants (29.2%) who alleged some sort of physical injury occurring as a result of a confrontation with police. Of these, 48 (24.5%) alleged more than one injury. The details of these 244 alleged injuries are presented in Table 5. Of the alleged injuries, 66.0% involved cuts and bruises.

Of the 196 complainants who alleged injuries, 64 (32.7%) of the injuries were classified as minor, 68 (34.6%) were seen as being moderate, and 26 (13.3%) were serious. In 38 (19.4%) of the cases, there was insufficient information to determine the severity of injury. Of the complainants who claimed injuries, 112 (57.1%) sought medical attention or treatment for their injuries.

On the basis of the description in the allegations, medical reports and photographs, the office researcher made a subjective evaluation of injuries. The criteria used were as follows:

MINOR INJURIES: require little or no medical attention, such as scratches, minor headaches, etc.,

MODERATE INJURIES: have visible or identifiable signs, such as cuts, bruises, etc.; and

SERIOUS INJURIES; such as fractures, teeth injuries, cuts deep enough to require stitches.

TABLE 5

<u>Alleged Injuries to Complainant</u>	<u>Number</u>	<u>Percent</u>
Cuts/Bruises	161	66.0
Injuries from Handcuffs	30	12.3
Internal	20	8.2
Fractures	15	6.1
Groin	6	2.5
Teeth	5	2.1
Unknown	<u>7</u>	<u>2.8</u>
TOTAL	244	100.0

2. Characteristics of Officers

Most allegations (88.2%) involved fewer than five officers. Specific data were collected on the first four officers listed in each complaint. The rank of these officers is shown in Table 6. Two thirds (65.8%) of the officers cited in the complaint were constables in the First Class category (usually, an officer must have served at least four years before gaining First Class status). Over three quarters (76.4%) of the officers had five or more years experience on the police force (Table 7).

TABLE 6

<u>Rank of Police Officer</u>	<u>No.</u>	<u>%</u>
Inspector or higher	7	0.7
Staff Sergeant	28	2.7
Sergeant	118	11.2
First Class Constable	692	65.8
Second Class Constable	42	4.0
Third Class Constable	69	6.6
Fourth Class Constable	53	5.0
Not Specified	<u>43</u>	<u>4.0</u>
TOTAL	1052	100.0

TABLE 7

<u>Years of Service</u>	<u>Number</u>	<u>Percent</u>
Under 1 Year	41	3.9
1 to 2	120	11.4
3 to 4	43	4.1
5 to 10	213	20.2
11 to 15	371	35.3
16 to 20	114	10.8
Over 20 Years	106	10.1
Not Specified	<u>44</u>	<u>4.2</u>
TOTAL	1052	100.0

3. Police Division in which Complaint Arose

The police divisions in which the alleged incidents occurred are listed in Table 8. The largest number of complaints occurred in 52 Division (98, 14.6%). This division is responsible for the downtown core of Toronto. The next highest number of complaints (68, 10.2%) arose in 14 Division which is immediately west of 52 Division.

TABLE 8

<u>Division of Occurrence</u>	<u>Number</u>	<u>Percent</u>
11	23	3.4
12	24	3.6
13	31	4.6
14	68	10.2
21	10	1.5
22	22	3.3
23	25	3.7
31	38	5.7
32	35	5.2
33	21	3.1
41	37	5.5
42	28	4.2
43	7	1.0
51	47	7.0
52	98	14.6
53	26	3.9
54	25	3.7
55	47	7.0
Central Traffic Unit	18	2.7
Eastern Traffic Unit	8	1.2
Western Traffic Unit	7	1.0
Other	11	1.7
Unknown	<u>15</u>	<u>2.2</u>
TOTAL	671	100.0

4. Complaint Process Data

(a) Filing a Complaint

Members of the public can register a complaint about Metropolitan Toronto police actions at any police station, at the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force, or at the Office of the Public Complaints Commissioner at 157 Bloor Street West. Complaints were registered at the Office of the Public Complaints Commissioner in 40.3% of the cases, at a police station in 41.7% of the cases, and at the Public Complaints Investigation Bureau in 11.8% of the cases. The remainder of the complaints were initiated elsewhere and are presented in Table 9 (see also Figure 3). Almost one half (42.5%) of the complaints were filed either the day of the alleged incident or on the next day. Most complaints (82.1%) were filed within a month of the occurrence (Table 10).

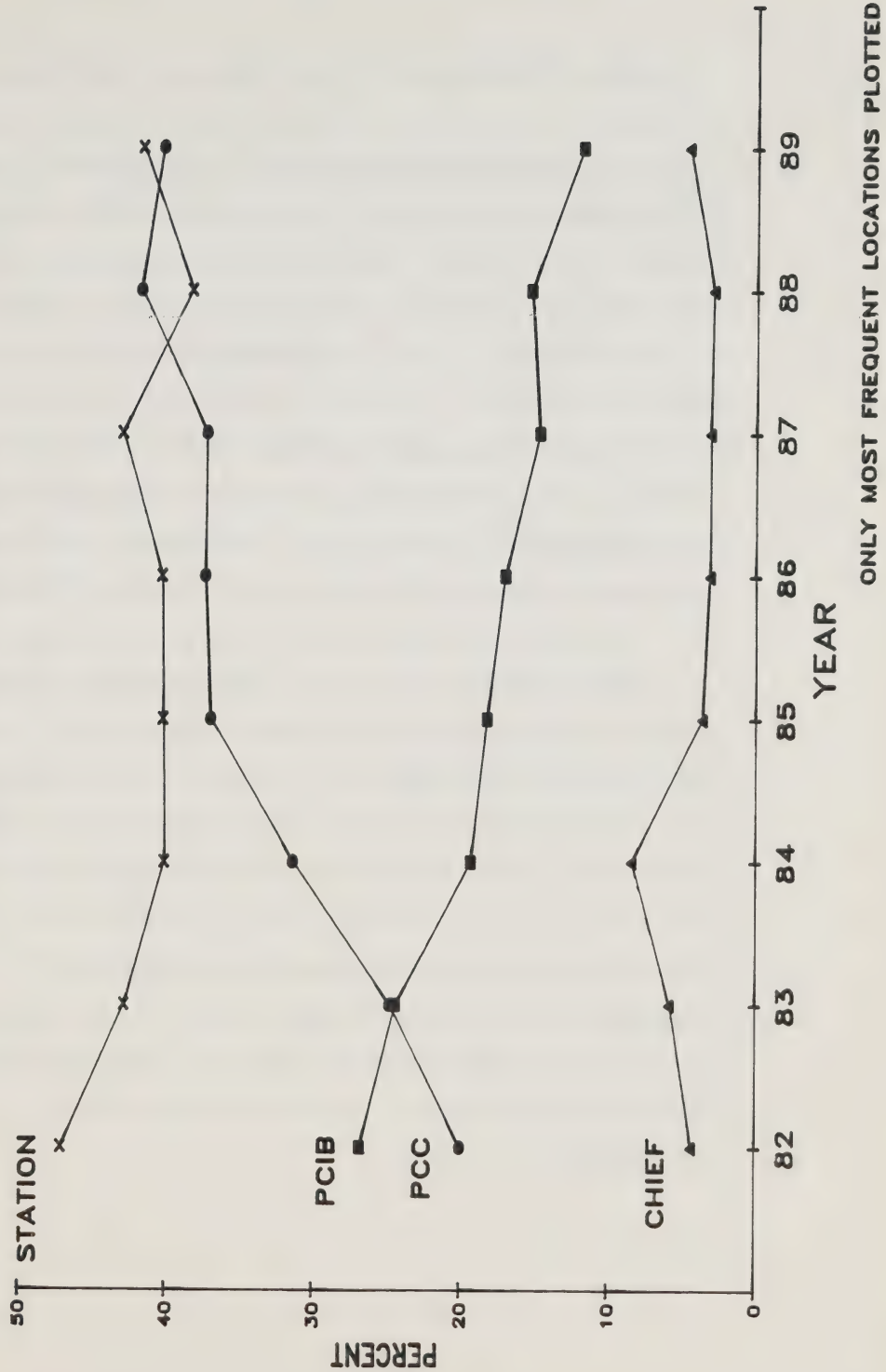
TABLE 9

<u>Location Complaint Filed</u>	<u>Number</u>	<u>Percent</u>
Police Station	280	41.7
Office of the Public Complaints Commissioner	271	40.3
Public Complaints Investigation Bureau	79	11.8
Chief of Police	31	4.6
Police Commissions	5	0.8
Other	<u>5</u>	<u>0.8</u>
TOTAL	671	100.0

TABLE 10

<u>Days: Occurrence to Filing</u>	<u>Number</u>	<u>Percent</u>
Same Day	194	28.9
Next Day	91	13.6
2 - 31 Days	266	39.6
32 - 60 Days	26	3.9
61 - 90 Days	19	2.8
Over 90 Days	51	7.6
Unspecified	<u>24</u>	<u>3.6</u>
TOTAL	671	100.0

FIGURE 3
LOCATION WHERE COMPLAINT FILED
PERCENT DISTRIBUTION



(b) Complaint Investigation

Most complaints are initially investigated by the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force. That Bureau is headed by a Staff Inspector and staffed by Staff Sergeants and Sergeants who are charged solely with the responsibility of investigating public complaints. The Public Complaints Commissioner has a statutory duty to monitor this initial investigation. On occasion, the Commissioner may undertake the initial investigation of a complaint or take over an investigation begun by the Public Complaints Investigation Bureau.

The civilian staff of the Office of the Public Complaints Commissioner can conduct the initial investigation of a complaint in three circumstances. They are: upon request by the Chief of Police; when there is unreasonable delay or other exceptional circumstances in the ongoing police investigation; or after receipt of the first interim report from the Public Complaints Investigation Bureau or the expiration of 30 days from the filing of the complaint. The Office of the Public Complaints Commissioner carried out 31 initial investigations in 1989.

Whether an investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, the initial decision as to whether discipline is warranted is made by the Chief of Police after the investigation is completed.

(c) Informal Resolutions

In 51 cases, complaints were resolved informally. A complaint is properly resolved informally if both the complainant and subject officer(s) agree in writing to the resolution. The reasons given for the informal resolution are presented in Table 11. In 37 cases the informal resolution was effected when the officer either admitted, apologized or explained his/her actions to the satisfaction of the complainant. In a further 4 cases the reason given was that the complainant was content to make the force aware of the incident.

In 10 cases, informal resolutions were coupled with disciplinary action. In 8 cases officers were counselled and or cautioned and in 2 cases officers were advised or spoken to by their superiors.

TABLE 11

<u>Analysis of Informal Resolutions</u>	<u>Number</u>	<u>Percent</u>
Officer admitted allegation, apologized or explained actions	37	72.6
Complainant content to make police force aware of complaint	4	7.8
Officer advised/spoken to by superiors	2	3.9
Officer counselled/and or cautioned	8	15.7
	<hr/>	<hr/>
TOTAL	51	100.0

(d) Withdrawals

In 200 cases, the complaints were withdrawn by the complainant. This amounted to 29.8% of all cases closed in 1989. Legal advice was cited by 44 complainants as the reason for withdrawing their complaints. Another 35 complainants who withdrew their complaints stated that it was their desire merely to call attention to the incident or put it on record rather than follow through with an investigation. Thirty-two complainants reported personal

reasons for withdrawing their complaints. Seventeen of the withdrawals were attributed to an admission of error on the part of the complainant. The error was usually explained by the complainant having been intoxicated at the time of the incident so that a clear recollection of the events was impossible. In another 17 cases, the reasons for withdrawal were not stated. Another 5 withdrew their complaints stating that all their concerns or allegations had been dealt with in court. The remaining 50 cases were withdrawn for miscellaneous reasons. The full list of reasons for withdrawals is presented in Table 12.

This office continues to monitor all withdrawals and make inquiries of complainants as to the reason for their withdrawals to ensure that such withdrawals are not the result of misunderstanding, threats or other improper pressure.

TABLE 12

<u>Reasons for Withdrawal</u>	<u>Number</u>	<u>Percent</u>
Legal advice	44	22.0
Complainant wanted to draw attention to incident	35	17.5
Personal reasons	32	16.0
Complainant admitted error	17	8.5
Not stated	17	8.5
Concerns dealt with in court	5	2.5
Other	<u>50</u>	<u>25.0</u>
TOTAL	200	100.0

(e) Decisions by the Chief of Police

In 420 complaints (62.6% of files closed in 1989) which were neither withdrawn nor informally resolved, investigation by either the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner was undertaken. Throughout the investigation, investigative reports are sent every 30 days to all involved parties including the complainant, the subject officer, and either the Office of the Public Complaints Commissioner or the Chief of Police, as appropriate. Whether the investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, upon completion, the file is presented to the Chief of Police or his designate for a decision.

In most of these cases (94.5%), the Chief concluded that no further action was warranted. In 192 of these cases, the Chief stated that there was insufficient evidence to prove misconduct beyond a reasonable doubt. In 44 of these cases, the Chief noted that the officer acted according to police procedure. In 15 of these cases, the Chief concluded that the evidence supported the officer's version of events. In 5 cases, the Chief offered an apology but no further action was taken. In another 2 cases the subject officers had resigned and therefore were

no longer subject to the legislation. In 139 (20.7%) of the cases, the Chief concluded that the complaint would not be dealt with under the Act. In 104 of these cases, the Chief decided the complaints were frivolous, vexatious or made in bad faith. In the remaining 35 cases, the Chief decided the complaint was not within the jurisdiction of the Act.

The Commissioner is concerned about many of the cases which the Chief decides are not within the jurisdiction of the Act. In a number of these cases, the complainants requested a review of the Chief's decision and the Commissioner found that although there may have been insufficient evidence to substantiate the complaint, the allegations nonetheless were within the jurisdiction of the Act since if they had been proved, they would have constituted misconduct. This police interpretation of the power to declare a complaint non-jurisdictional is a continuing concern of the Commissioner.

In a total of 33 cases, some discipline of the accused officer(s) was imposed. Ten of these cases involved informal resolution, whereas 23 were formal decisions made after full investigation. (See Table 13 for a complete breakdown of discipline imposed by the Chief.)

Discipline choices available to the Chief of Police in these circumstances are as follows:

Officer Advised/Spoken To: Without making a judgment as to whether there is substance to the allegation, a superior officer informally discusses the case with the subject officer and suggests better ways of dealing with the situation.

Counsel: A superior officer acknowledges that there is substance to the allegation, but that the conduct was judged to be unintentional or resulted from inexperience. A counsel is recorded on the police officer's file at headquarters.

Caution: As above for counsel. In addition, the officer is warned that further misconduct will result in charges pursuant to the Police Act.

Charge Under Police Act: The Chief of Police may charge the officer under the Police Act. In these cases, an internal disciplinary tribunal is convened. Misconduct must be proved beyond a reasonable doubt. Employment penalties can be imposed.

Board of Inquiry: The Chief of Police may refer the case to a public hearing before a civilian board of inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984. Misconduct must be proved beyond a reasonable doubt and employment penalties can be imposed.

Charge Under Criminal Code: The Chief of Police may cause the subject officers to be charged under the Criminal Code.

Of the 23 cases in which discipline was imposed after full investigation, the Chief counselled the officer in 11 cases, and cautioned and counselled the officer in 2 cases. In 2 cases the officer was advised or spoken to. In a further 2 cases the unit commander imposed a penalty of 2 days time off. In one case the Chief had criminal

charges laid. Pursuant to the Chief's decision to charge officers under the Police Act, 5 disciplinary trials were completed in 1989. In one case the charge against the officer was dismissed. In 3 cases the officers were found guilty and forfeiture of days off was imposed ranging from 2 to 10. The remaining case resulted in the officer being forced to resign or face dismissal.

In all, 8 criminal charges against police officers were disposed of in 1989. One charge was laid by the Chief of Police (as noted above) and 7 by complainants. In 3 cases the charges were dismissed, in 3 cases the charges were withdrawn, and in 2 cases the officers were found guilty.

TABLE 13

Discipline Taken Against Police Officers
Nature of Resolution

<u>Action</u>	<u>Informal</u>	<u>Formal</u>	<u>Total</u>
Officer Spoken to/Advised	2	2	4
Counsel	7	11	18
Counsel and Caution	1	2	3
<u>Police Act</u> Charge	-	5	5
Criminal Charge	-	1	1
Days Off at			
Unit Commander Level	<u>—</u>	<u>2</u>	<u>2</u>
TOTAL	10	23	33

(f) Summary of Disposition of Complaints

Of the 671 complaints closed in 1989, the following dispositions took place:

WITHDRAWALS - 200

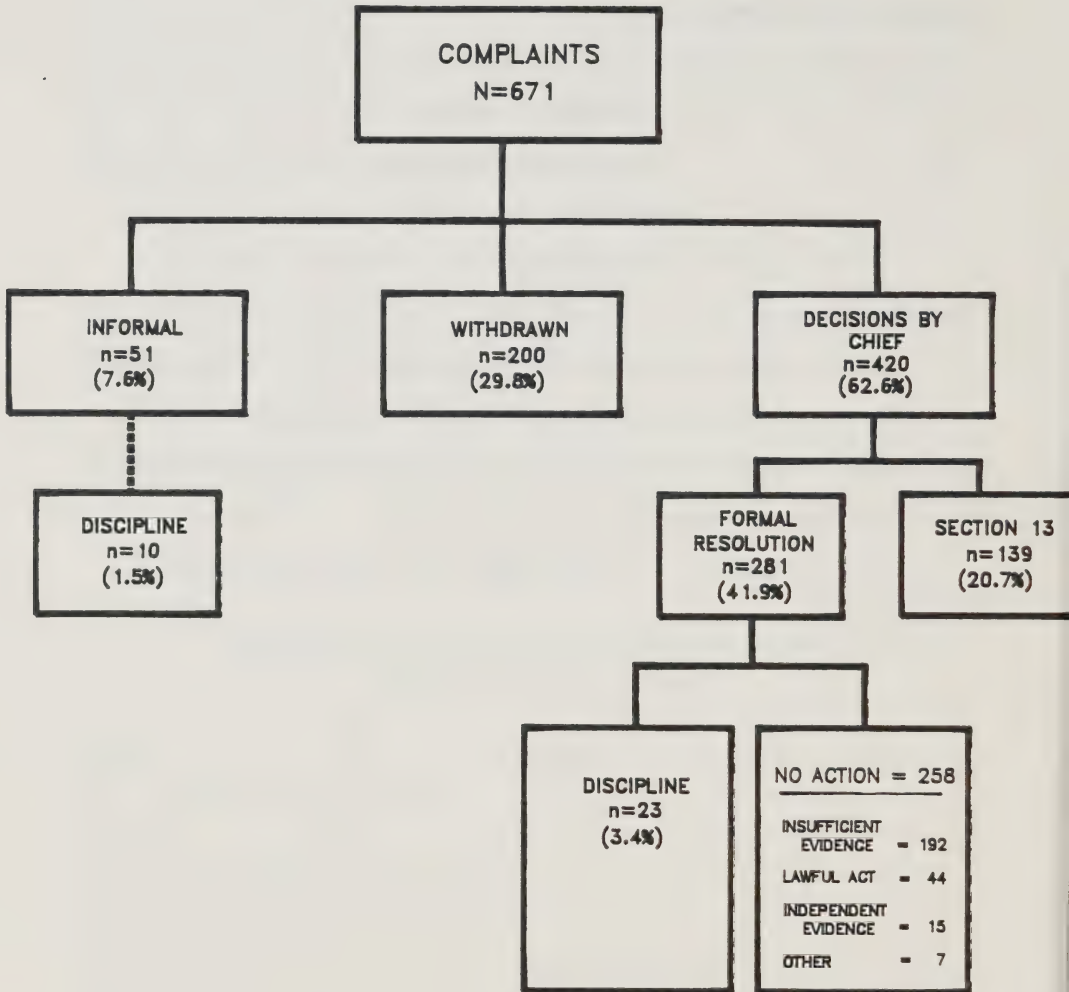
INFORMAL RESOLUTIONS - 51

DECISIONS BY CHIEF - 420

(See Figure 4).

An analysis was made comparing the type of allegation with the nature of the complaint resolution (Table 14). The major difference found was that the complaints which were resolved informally were less likely to involve an allegation of assault. There were no other noteworthy differences.

FIGURE 4
INITIAL DISPOSITION OF COMPLAINTS



Note: The percentages are relative to the
TOTAL number of complaints

Table 14
COMPLAINT RESOLUTION BY TYPE OF ALLEGATION

ALLEGATION	INFORMAL		WITHDRAWN		FORMAL		SECTION 13		TOTAL	
	n	%	n	%	n	%	n	%	n	%
Assault/ Excessive force Threat, Verbal Abuse Failure to act according to police procedure Other Misuse of Authority	9	10.6	95	22.1	133	23.5	60	23.2	297	22.2
	42	49.4	146	34.0	192	33.9	76	29.3	456	34.0
	30	35.3	171	39.9	221	39.1	109	42.1	531	39.7
	4	4.7	17	4.0	20	3.5	14	5.4	55	4.1
TOTAL NUMBER OF ALLEGATIONS	85	100.0	429	100.0	566	100.0	259	100.0	1339	100.0
AVERAGE ALLEGATIONS PER COMPLAINT	1.7		2.2		2.0		1.9		2.0	

5. Reviews by the Public Complaints Commissioner

If the complainant is dissatisfied with the decision of the Chief of Police, including a decision that the complaint is frivolous or not within the jurisdiction of the Act, he or she has a right to request a review by the Office of the Public Complaints Commissioner. The Commissioner, however, has no jurisdiction under the legislation to initiate a review. Of the 139 cases in which the Chief decided the complaint was frivolous, vexatious or the complaint was not within the jurisdiction of the Act, 37 complainants requested a review of that decision.

In 1989, 134 reviews requested by complainants were completed. In 102 cases in which a review was completed, the Commissioner agreed in full or in part with the decision of the Chief. In 8 cases, the Commissioner decided that it was not in the public interest to order a hearing into the complaint. In 16 cases, the person who

had requested a review withdrew the complaint before the review was completed. In 2 cases, the Commissioner arranged an informal resolution of the complaint. Two cases resulted in Boards of Inquiry being completed. The remaining 4 cases resulted in formal recommendations being made. In all, 3 Boards of Inquiry were called in 1989 and one officer appealed a Police Act decision. (A section on Boards of Inquiry appears as Part V of this Report).

6. Length of Time Taken to Resolve Complaints

A record was kept of the time it took to resolve each complaint.

The number of days between the time the complaint was filed and a decision by the Chief of Police averaged 182. A representation of the number of days between filing and the final investigative report is presented in Table 15.

The number of days between a request for review by the complainant and a decision by the Public Complaints Commissioner averaged 154. Table 16 sets out these figures.

TABLE 15

<u>Number of Days From Filing to Final Report</u>	<u>Number</u>	<u>Percent</u>
1 - 30 Days	57	8.5
31 - 60 Days	83	12.4
61 - 90 Days	82	12.2
91 - 120 Days	83	12.4
121 - 150 Days	76	11.3
151 - 180 Days	46	6.9
181 - 270 Days	117	17.4
271 - 360 Days	53	7.9
Over 360 Days	74	11.0
TOTAL	<u>671</u>	<u>100.0</u>

TABLE 16

<u>Number of Days From Review Request to P.C.C. Decision</u>	<u>Number</u>	<u>Percent</u>
1 - 30 Days	16	11.9
31 - 60 Days	30	22.4
61 - 90 Days	11	8.2
91 - 120 Days	17	12.7
121 - 150 Days	11	8.2
151 - 180 Days	13	9.7
181 - 270 Days	14	10.5
271 - 360 Days	9	6.7
Over 360 Days	<u>13</u>	<u>9.7</u>
TOTAL	134	100.00

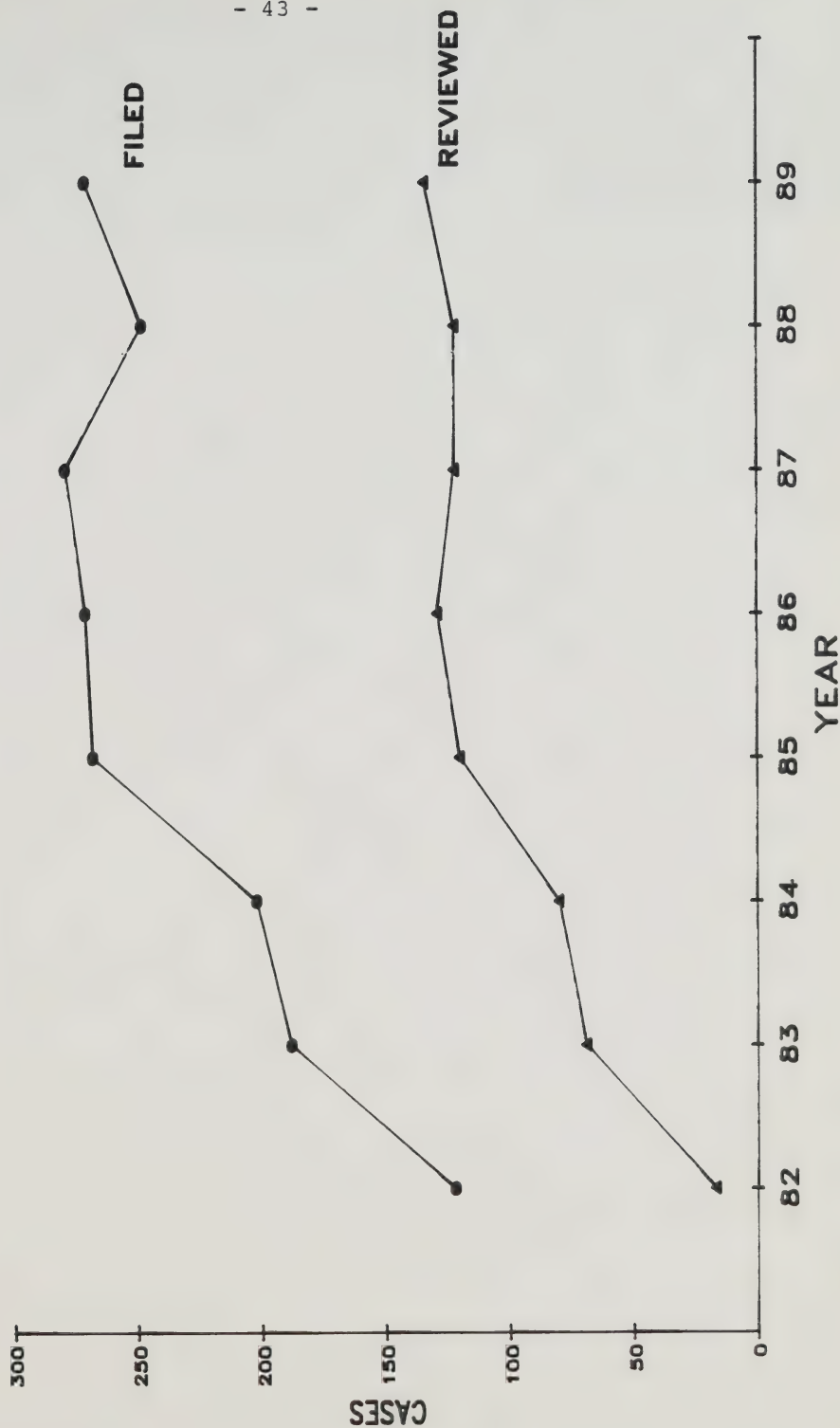
7. Work-load of the Office of the
 Public Complaints Commissioner

Data has been collected on the operations of the Office of the Public Complaints Commissioner since 1982. There are two major points of contact with the public. The first is upon receipt of the original complaint. The second is the reviewing of the police decision.

Of the total number of complaints filed, the number of complaints filed at the Office of the Public Complaints Commissioner has risen from 20% in 1982 to 40.3% in 1989. This increase is presented graphically in Figure 5. Requests for reviews have increased from 17 in 1982 to 134 in 1989.

As is apparent from the above figures, public demand for the services of the Office of the Public Complaints Commissioner has increased substantially since its inception.

FIGURE 5
WORKLOAD INDICATORS
PUBLIC COMPLAINTS COMMISSIONER



PART III

Other Significant Activities

PART III - OTHER SIGNIFICANT ACTIVITIES

A. EDUCATION AND OUTREACH - POLICE AND PUBLIC

In 1989, the Public Complaints Commissioner continued regular appearances at the C.O. Bick Police College, for training sessions on the complaints legislation and its implications both for constables and for supervisory police officers. The Commissioner found these education sessions particularly useful in that they allowed for informal dialogue with members of all ranks of the police force. Since taking office in October 1985, the Commissioner has attended the C.O. Bick College for this purpose on 54 occasions.

Public education activities and consultations with the public continued throughout the year. Through meetings with individuals, community groups and social service agencies, the Office of the Public Complaints Commissioner undertook to improve public awareness of the Commissioner's role.

B. EDUCATION AND OUTREACH - DON JAIL INMATES

Staff members of the Public Complaints Commissioner's legal branch have been involved in the past year in attending at the Don Jail to address inmates. Periodic visits have been made to meet members of the "RAP" group, a group run by two lawyers and attended by approximately 20 inmates of the Don Jail at any given time. Various speakers, in attendance at the group's invitation, address the group during weekly meetings. The Office of the Public Complaints Commissioner has received a standing invitation to join with the "RAP" group periodically.

During past visits, staff members have alerted inmates to the service offered by the Office and have explained the complaint process in detail. The response to past sessions has been positive.

C. PARTICIPATION IN POLICE/COMMUNITY DIALOGUE

Part of the mandate of the Office of the Public Complaints Commissioner is to try to prevent, or avoid the escalation of, situations of misunderstanding or hostility between the police and the community. It became apparent during the course of the past year that further contact with minority communities in particular was necessary. In furtherance of this objective, the Public Complaints Commissioner's staff have been involved with a variety of groups created to deal with issues currently confronting the Metropolitan Toronto Police Force and the communities of Toronto and surrounding areas. The examples below represent the involvement of the Office of the Public Complaints Commissioner in issues which affect these disparate groups.

1. Council on Race Relations and Policing

The Council on Race Relations and Policing is a partnership between the Metropolitan Toronto Police Force and representatives of institutions, community agencies and

individuals with an interest in issues pertaining to race relations and policing. The organization was originally established in 1976 and its mandate includes bringing the above-noted groups and individuals together to discuss issues of mutual concern. It also aims to provide advisory assistance to other committees on race relations and policing by developing programs and strategies for joint problem-solving with the police force, developing public education programs and documenting and analyzing trends and experiences in the police/race relations field. The Office of the Public Complaints Commissioner has been represented on the Council since 1982 and office staff are active participants in the work of various subcommittees.

The Council this year made a commitment to intervene in situations that were occurring in the city that had the likelihood of developing into a crisis situation. Given the resources of a wide and dedicated group of community members and a strong involvement by the specialized units of the police force, the Council is in a unique position to bring together these groups to their mutual benefit.

2. The Greater Toronto Region Working Group on Policing
in Multicultural, Multiracial Urban Communities

The Greater Toronto Region Working Group (the Working Group) was formed in 1984 to address policing issues arising out of the increasing plurality of our society. The Working Group is composed of representatives from the police forces of Hamilton-Wentworth, Durham Region, Halton Region, Metropolitan Toronto, Peel Region and York Region, as well as the Ontario Provincial Police, the Royal Canadian Mounted Police, representatives of various committees and levels of government and individuals with expertise in the areas of race and ethnic relations and cross-cultural communication. The purpose of the Working Group is to develop detailed plans of action by which police and the community can achieve more representative police forces, enhance cross-cultural training for police officers, improve citizen complaint procedures, and improve and coordinate police/community liaison activities. The Office of the Public Complaints Commissioner has been represented on the Working Group since its inception as a member and office staff at present serve on the steering committee.

During 1989, the Working Group completed its Guidelines for Intercultural/Race-Relations Training for Police Personnel, which was presented to the Attorney General and to the Solicitor General of Ontario. The Report was also widely distributed to community groups and to police forces.

3. Toronto Mayor's Committee on Community and Race Relations (Subcommittee on Policing)

The Toronto Mayor's Committee on Community and Race Relations was established in 1981 by the Council of the City of Toronto to promote understanding and respect among racial, cultural, ethnic and religious groups in Toronto. In August, 1988, the Committee revived its policing subcommittee which meets regularly and reports to the entire Mayor's Committee on a monthly basis. Issues dealt with in 1989 included the shootings of Lester Donaldson, Wade Lawson and Sophia Cook; the emergence of youth gangs in the Toronto area; submissions to the Task Force on Race Relations and Policing and to the Standing Committee on the Administration of Justice with respect to Bill 4, An Act to Amend the Metropolitan Toronto Police Force Complaints Act, 1984.

A member of the Public Complaints Commissioner's staff is participating in this group's efforts as a resource person.

4. Intergovernmental Race Relations Network

The Intergovernmental Race Relations Network, established in June, 1988, is a committee of race relations professionals who meet on a regular basis to share information and to develop strategies and procedures to address emerging race-related issues. In 1989, this group dealt with a wide range of issues including the shootings of Lester Donaldson, Wade Lawson and Sophia Cook; youth gang activities; police-community relations; the emergence of white supremacist groups and the distribution of racist materials within the Metropolitan Toronto area.

A member of the Public Complaints Commissioner's staff participates in the activities of this group.

5. Attorney General's Race Relations Committee

In 1989, the Attorney General's Race Relations Committee commissioned consultants to review the Ministry's services in order to determine if policies and operations

meet the needs of a multiracial, multicultural public. The Committee will be active in 1990 implementing the recommendations arising from the consultant's report and other projects.

A member of the Public Complaints Commissioner's staff participates as a member of this Committee.

D. THE "THINK TANK"

Midway through 1989 it became apparent that a need existed to review and re-evaluate matters of policy, procedure and administration at the Office of the Public Complaints Commissioner in order to assess the adequacy of such policies and procedures and to ensure consistency of application. It was also considered important to review these matters at this time to address specifically how current policies and practices might be affected by the passing into law of the proposed province-wide expansion of the Office of the Public Complaints Commissioner as provided for in Bill 107, the Police Services Act, 1989 currently before the Legislature.

As a result, the Commissioner conducted a two-day intensive session in November, 1989 attended by staff at which a wide variety of issues and ideas were discussed and developed. Areas of discussion included computerization of the office, file security and tracking, community outreach efforts, education of staff, the public and the police, the monitoring of complaints investigated by the police, delay in processing complaints and the conduct of Boards of Inquiry and appeals.

The meeting was successful in clarifying existing policies and procedures, identifying areas in which further review and action were required, and in developing areas of concern and interest to this Office in the future.

E. SEMINAR FOR BOARD OF INQUIRY MEMBERS

On October 12 and 13, 1989 a two-day Board of Inquiry seminar was held for the benefit of all Board of Inquiry members. A similar such seminar was held two years previously. It was felt that an updated seminar would be

useful for Board members, in particular those recently appointed. The Board of Inquiry seminar was also attended by investigative and legal staff of the Office of the Public Complaints Commissioner, and a number of senior police management personnel.

Professor Edward Ratushny of the Faculty of Law, University of Ottawa, was invited to attend the seminar and address a wide range of topics in the administrative law field. Specific topics such as rules of evidence, conduct of hearings, procedural fairness, decision making and decision writing were discussed. Specific provisions of the Statutory Powers and Procedures Act, and the Charter of Rights and Freedoms were also addressed.

The seminar offered Board members the opportunity to discuss general issues of concern in the area of the law governing administrative tribunals.

F. THE INTERNATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT
OF LAW ENFORCEMENT (IACOLE)

The International Association for Civilian Oversight of Law Enforcement, of which the Public Complaints

Commissioner was President from September 1987 to 1989, was established in 1985. It provides an international exchange forum for those who work directly in civilian oversight of law enforcement or who are interested in the subject. The intent of the exchange is to encourage and strengthen government agencies charged with the responsibility of examining and commenting upon citizen complaints of police misconduct.

An arena for discussion and debate has been international conferences which have been attended by members of civilian oversight agencies, police executives, elected government representatives, police association officials, government administrators, civil rights/civil liberties advocates, lawyers and criminal justice educators from around the world. Representatives of civilian oversight agencies from Australia, Bermuda, Canada, England, Ireland, the Netherlands, Nigeria, Northern Ireland, Sweden and the United States of America have attended IACOLE conferences.

IACOLE has created a clearinghouse of published materials about civilian oversight of law enforcement. A catalogue separates the materials into general categories

and lists each publication with the title, author, publisher, a brief synopsis and where the publication can be obtained. The Association has printed the proceedings of its conferences and a booklet of selected conference speeches which are available through the clearinghouse.

A newsletter, which periodically publishes and highlights IACOLE activities, is a means of communication for civilian oversight agencies and reports on recent developments in the field, such as the establishment of a new oversight agency or changes in established agencies.

Membership in the Association is divided into two categories: members and associate members. Members are defined as "persons who are not sworn law enforcement officers and who work for or constitute agencies which are established by legislative authority to investigate and/or review complaints against law enforcement." Members are eligible to vote at Association meetings and to serve as officers. Associate Members are defined as "persons interested in the oversight of law enforcement." Associate members are permitted to participate in all Association activities except voting or serving as officers.

The Public Complaints Commissioner has served on the

Board of Directors of IACOLE as a member at large, Vice President, and in 1987 was appointed President. Since the Association's Annual Conference in Oakland, California in September of 1989, he serves on the Board of Directors as Past President.

The theme of the Oakland Conference, at which the Office of the Public Complaints Commissioner was represented, was "The Future of Civilian Oversight", with discussion focused on such topics as ensuring equal policing, dealing effectively with the media, and building stronger, more effective, oversight agencies.

The first part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language itself. The second part of the paper discusses the importance of the study of the history of the English language. It is argued that a knowledge of the history of the language is essential for a full understanding of the language itself.

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PART IV
Recommendations to the
Metropolitan Toronto
Board of Commissioners of Police

PART IV - RECOMMENDATIONS TO THE METROPOLITAN
TORONTO BOARD OF COMMISSIONERS OF POLICE

The Metropolitan Toronto Police Force Complaints Act, 1984, gives the Commissioner the power to make formal recommendations aimed at preventing situations which have given rise to complaints. Section 21 of the Act provides that the Commissioner may make recommendations to the Metropolitan Toronto Board of Commissioners of Police when the Commissioner is of the opinion that a police practice or procedure, or law affecting the resolution or prevention of complaints, should be altered or implemented. The recommendation power has proved to be a very useful tool in effecting change in cases in which it would be inappropriate to call a board of inquiry into specific allegations but in which it would be equally inappropriate not to act at all.

The year 1989 resulted in an increase in the number of recommendations, which included the following:

1. THAT THE METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE ADD TO THE METROPOLITAN TORONTO POLICE FORCE ADMINISTRATIVE PROCEDURES THE REQUIRMENT THAT ANY OFF-DUTY POLICE OFFICER INVOLVED IN A MOTOR VEHICLE ACCIDENT IMMEDIATELY IDENTIFY HIMSELF OR HERSELF TO THE INVESTIGATING OFFICER AS A POLICE OFFICER AND THAT SUCH ACCIDENTS BE INVESTIGATED BY A SUPERVISOR.

During the year, the Office of the Public Complaints Commissioner received a complaint from a citizen who had been involved in an automobile accident in which the driver of the other vehicle was an off-duty police officer. The complainant's perception that the investigating officer displayed preferential treatment to the off-duty officer was reinforced when he was subsequently exonerated from blame and the complainant was found responsible.

The Commissioner, after inquiring into the details of the accident, recommended that police administrative procedures be amended to require that any off-duty police officer involved in an automobile accident immediately identify himself or herself to the investigating officer as a police officer. It was also recommended that such accidents be investigated by a supervisor.

The police recognize the potential for real or

perceived conflict of interest in such situations and are currently revising their regulations to address such conflicts.

2. THAT THE BOARD OF COMMISSIONERS OF POLICE SEEK TO ADD TO THE METROPOLITAN TORONTO POLICE FORCE OPERATIONAL PROCEDURES THE REQUIREMENT THAT EVERY POLICE OFFICER WHO DRAWS OR DISPLAYS A FIREARM IN THE PERFORMANCE OF FORCE DUTIES MUST REPORT THE DETAILS OF THE OCCURRENCE TO THE CHIEF OF POLICE, DISTRICT STAFF SUPERINTENDENT AND UNIT COMMANDER.

FURTHER THAT THE SOLICITOR GENERAL EXAMINE THE FEASIBILITY OF AMENDING REGULATION 790 PURSUANT TO THE POLICE ACT TO INCORPORATE SUCH A REQUIREMENT.

An increasing number of complaints have been lodged concerning the unholstering and improper use of firearms by police. As a result of this developing concern, the Office recommended that the Board of Commissioners of Police seek to add to the Metropolitan Toronto Police Force Operational Procedures the requirement that every police officer who draws or displays a firearm in the performance of Force duties must report the details of the occurrence to the Chief of Police, District Staff Supervisor and Unit Commander.

At present, the unholstering of a revolver by a police officer is neither regulated nor

documented. It is the position of the Public Complaints Commissioner that some form of onus should be on an officer to report any instance in which he or she deems it necessary to draw a firearm during the course of duty. Officers are obliged to file such reports when they have had occasion to use force. The drawing of firearms is an equally serious matter that should be documented.

The recommendation dealing with this issue was forwarded to the Chief of Police. It is the Chief's position that the current requirement with respect to "Use of Force" reports is more than adequate for documenting all eventualities of significance and that any further reporting structure would result in an unnecessary administrative burden. The Chief of Police forwarded both the recommendation and his response to the Metropolitan Toronto Board of Commissioners of Police. The Board of Commissioners of Police concurred with the Chief's response.

The Public Complaints Commissioner is in

disagreement with the view of the Chief of Police and the Board of Commissioners of Police. The unholstering of a revolver is a necessary prerequisite to its discharge and is therefore a serious matter which must be both regulated and documented. It is in the interest of the public and the police that the police have available for analysis sufficient information to permit re-training or counselling of officers drawing their revolvers in inappropriate circumstances or to permit necessary revision of applicable training or procedures.

Failure to monitor the drawing of firearms leaves potentially unresolved one area of police and community conflict which might be alleviated through more informed regulation of the drawing of firearms.

3. THAT THE METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE CONTACT THE SOLICITOR GENERAL FOR ONTARIO, WITH A VIEW TO IMPLEMENTING A PROCEDURE AMONG ALL OF ONTARIO'S POLICE FORCES WHEREBY A MOTORIST WHO RECEIVES A 48-HOUR REPORT FROM A POLICE OFFICER FOR A VIOLATION OF THE HIGHWAY TRAFFIC ACT, MAY REPORT THE CORRECTION TO ANY PROVINCIAL OR MUNICIPAL POLICE FORCE IN ONTARIO.

A further recommendation concerning reporting requirements arose out of a situation in which a complainant was stopped by police in Toronto for not having a licence plate on the front of the car and was given 48 hours by the police to report the replacement of the plate to a Metropolitan Toronto police station. The complainant, however, did not reside in Toronto and when he advised the officer that he therefore could not comply with such a requirement, he was charged with a Highway Traffic Act offence.

Investigators at the Office of the Public Complaints Commissioner discovered that police forces in Ontario have no reciprocal arrangement whereby motorists can report the rectification of violations to a police force other than the one responsible for the jurisdiction in which the offence was cited. As this state of affairs seemed inherently unjust, the Commissioner recommended to the Board of Commissioners of Police and to the Force that the Solicitor General be requested to establish a province-wide procedure

permitting a motorist who receives instructions to report back to police within 48 hours due to a violation of the Highway Traffic Act to report the correction to the police force of his or her choosing.

Both the Chief of Police and the Board of Commissioners of Police have since concurred with the recommendation and have forwarded their views to the Solicitor General for consideration.

4. THAT THE BOARD OF COMMISSIONERS OF POLICE REQUEST THE CHIEF OF POLICE TO ISSUE A STANDING ORDER ADVISING ALL MEMBERS OF THE FORCE THAT THEY SHOULD PROCESS CONTRAVENTIONS OR BREACHES OF RESTRAINING ORDERS ISSUED UNDER THE FAMILY LAW ACT AS FAMILY COURT OFFENCES AND NOT AS OFFENCES PURSUANT TO THE CRIMINAL CODE.

THAT THIS RECOMMENDATION BE REFLECTED AS AN ADDITION TO "THE METROPOLITAN TORONTO POLICE FIELD TRAINING PRECIS, FAMILY LAW ORDERS."

A recommendation arose from a complaint by a citizen who was charged by police pursuant to the Criminal Code for violating a restraining order which had been previously issued against him. His complaint centered around the belief that he should have been charged with a summary conviction offence under the Family Law Act

rather than an indictable offence pursuant to the Criminal Code.

A Supreme Court of Ontario ruling of November, 1988 deemed the Criminal Code to be inappropriate in cases such as the complainant's when there is a penalty provided under the Family Law Act.

In light of that decision, the Commissioner recommended that the Chief of Police issue a Standing Order advising all members of the force that contraventions of restraining orders issued under the Family Law Act should be processed as Family Court offences and not as offences under the Criminal Code.

The Chief of Police has re-issued a Standing Order clarifying this area of the law and has thereby complied with the Commissioner's recommendation.

5. During 1989, staff of the Office of the Public Complaints Commissioner were involved in drafting a series of detailed recommendations

governing police conduct in the handling of mass arrests at large demonstrations. This work was begun as a result of several complaints which were filed following arrests at demonstrations connected with the Economic Summit in the summer of 1988. These complaints centered around alleged excessive use of force and denial of prompt right to counsel. Staff members are in the process of formulating recommended comprehensive procedures to enable police to better prepare for and handle the volume of arrests in such situations. Work in this area is still ongoing.

PART V
Boards of Inquiry
and Appeals

PART V - BOARDS OF INQUIRY
AND APPEALS

A. INTRODUCTION

Either the Public Complaints Commissioner or the Chief of Police can decide to send a complaint to a Board of Inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984. In addition, any police officer who wishes to appeal from an adverse decision of an internal police disciplinary tribunal arising from a public complaint can appeal to a Board of Inquiry under the complaints legislation.

The individuals who form Boards of Inquiry which hear and decide upon complaints are selected from a panel appointed by the Lieutenant Governor in Council. One-third of the members of this panel are recommended for appointment jointly by the Attorney General and the Solicitor General; one-third of the members are recommended for appointment by the Metropolitan Toronto Council; and the remaining one-third are recommended jointly by the Metropolitan Toronto Board of Commissioners of Police and

the Metropolitan Toronto Police Association. The Attorney General/Solicitor General appointees must be members of the Law Society of Upper Canada. These lawyers chair each Board hearing.

A Board of Inquiry in respect of an allegation of serious misconduct is heard by three people, one from each group of appointees. A Board of Inquiry involving an allegation of minor misconduct is heard by one person, an appointee of the Solicitor General and Attorney General. The standard of proof in these proceedings requires that an allegation be proved beyond a reasonable doubt for there to be a finding of misconduct. Hearings are held in public and are procedurally similar to other administrative or quasi-judicial proceedings. The Statutory Powers Procedure Act and the rules of natural justice apply. There are additional provisions in the complaints legislation protecting the rights of police officers.

Between January 1, 1989 and December 31, 1989 a total of three complaints were referred to a Board of Inquiry. Within the reporting period, two complaints were given hearing dates in 1990. The third was heard partially in 1989 and continued on into 1990. One appeal from a Police Act disciplinary hearing was referred to a board and will be heard in 1990.

Two Board of Inquiry decisions were delivered during 1989 as a result of Boards called in 1988. The Divisional Court heard one appeal from a Board decision.

B. BOARD OF INQUIRY DECISIONS

1. Re: Brackett and P.C. Harris
August 1, 1989
Chair: Mary Jane Hatton
Hearing ordered by
Public Complaints Commissioner

The complainant (Daniel Brackett) made two allegations against P.C. David Harris alleging firstly, that Harris used unnecessary violence on Mr. Brackett while effecting his arrest, contrary to section 1(g)(ii) of the Police Act Code of Offences. The substance of the second allegation was that the officer used profane language towards the complainant, contrary to section 1(g)(iii) of the Code of Offences. P.C. Harris pleaded guilty to the charge of using profane language. The charge of unnecessary violence was accepted as withdrawn by the Chair.

Pursuant to a joint submission by counsel for the Attorney General and counsel for the officer, a reprimand

was deemed appropriate. The Board, in its decision, took into account the fact that Mr. Brackett indicated that he was satisfied with the penalty and that he was satisfied the proceedings would have some deterrent effect on the subject officer and police officers within the Force in general.

2. Re: Gray and Sergeant W. Wilson
September 14, 1989
Chair: E.A. Cronk
Hearing ordered by
the Public Complaints Commissioner

The basis for the allegation of misconduct was the complaint of Lyndon Gray. Mr. Gray alleged that Sergeant Wilson had said to a male person "get in the car, this is Canada, you're not in niggerland no more" and thereby acted in a manner likely to bring discredit upon the reputation of the Metropolitan Toronto Police Force, contrary to section 1(a)(i) of the Code of Offences. Alternatively, it was alleged that Sergeant Wilson had failed to report forthwith to an officer in charge a racial slur uttered by a member of the Force contrary to section 1(c)(vi) of the Code of Offences.

At the outset of the hearing, Sergeant Wilson admitted the first allegation.

In its decision, the Board made note of submissions made by the counsel for the Attorney General. Counsel argued that the admitted conduct by the officer was a very serious matter in that it amounted to a racial incident which would reflect adversely on the entire Force. Counsel referred specifically to a Standing Order of the Metropolitan Toronto Police Force effective December 18, 1985 in which it was made clear that all officers are to avoid any expression or display of prejudice, bigotry, discrimination or racial or sexual harassment.

The Board regarded the misconduct on the part of Sergeant Wilson as being completely unacceptable and wholly inappropriate for any member of the Force. Taking into account both the serious nature of the misconduct and the fact that the officer had, until that time, an exemplary record, an appropriate penalty for the misconduct was deemed to be forfeiture of five days off, to be worked by Sergeant Wilson without pay, in addition to a reprimand.

C. DIVISIONAL COURT APPEALS

1. Re: McMorrow and P.C. J. Mills
and P.C. D. Stoneman

March 8, 1989

Court: Callaghan, A.C.J.H.C. (as he then was)
Gray, J.
Ewaschuk, J.

At a Board of Inquiry, the two subject officers were found guilty of using unnecessary violence.

On March 8, 1989, the Divisional Court dismissed an appeal from the Board's decision brought by P.C. Mills and P.C. Stoneman. The Court indicated that the finding of the Board that the complainant (McMorrow) was kicked by one of the officers was, on a totality of the evidence, one which the Board could have reasonably made, and that the evidence was adequate to support the Board's ruling. A copy of the written decision is found in Appendix A.

PART VI
Race Relations and
Policing Task Force

PART VI - THE RACE RELATIONS AND POLICING TASK FORCE

In December of 1988, Solicitor General Joan Smith announced the establishment of a Task Force "to address promptly the very serious concerns of visible minorities respecting the interaction of the police community with their own." The Public Complaints Commissioner was named as Chair. Other members included Dr. Ralph Agard, Kamala-Jean Gopie, Halton Regional Police Chief James Harding, T. Sher Singh and Roy Williams.

The mandate of the Task Force was to inquire into and report on various aspects of police interaction with the visible minority community. The Report was to examine training, community liaison, and the feasibility of establishing a province-wide monitoring system to review regularly the interaction between these two groups.

The Task Force, which established headquarters in the offices of the Public Complaints Commissioner, received many written submissions from the public as well as oral submissions at its public hearings in Toronto, Ottawa, Windsor and Thunder Bay.

The Task Force Report was delivered to the Solicitor General and released to the public on April 11, 1989.

In November, 1989, Solicitor General Steven Offer announced that his Ministry had studied the report, accepted the fundamental principles underlying the findings of the Task Force, and developed a comprehensive plan of implementation.

The great majority of the fifty-seven recommendations were endorsed by the government in all areas covered by the Task Force terms of reference. These areas include the use of force by police, comprehensive measures in employment equity, police-community relations, recruitment and training, and the establishment of a special investigative unit for cases involving death or serious injury to members of the public at the hands of the police.

Substantial funds have been allocated for implementation of these recommendations. A unit responsible for the implementation and monitoring of its success has been established within the Ministry of the Solicitor General. Details of the implementation are currently being planned.

The Task Force represented the major commitment of the Commissioner for the first four months of the year. Its work and recommendations, together with the government response, will have significant impact on the future of policing in Ontario. The Commissioner was only able to perform his Task Force role with the active support and encouragement of the staff of the Office of the Public Complaints Commissioner. For these reasons, the Executive Summary of the Task Force Report is included in this Annual Report.

REPORT OF THE ONTARIO TASK FORCE ON
RACE RELATIONS AND POLICING

EXECUTIVE SUMMARY

Introduction

Throughout the 1970's and early 1980's growing dissonance between some Ontario police forces and visible minority communities led to studies and reports initiated by provincial and municipal governments. Those reports were intended to provide guidance in the achievement of equitable relations between police and those communities.

Reports were written by the late Arthur Maloney, Q.C., in 1975; the Honourable Mr. Justice Donald Morand in 1976; Walter Pitman in 1977; G. Emmett Cardinal Carter, Archbishop of Toronto, in 1979; Dr. Reva Gerstein in 1980; and the late Honourable Judge John Greenwood in 1980. The issues raised in their reports bear remarkable similarity to those confronting this Task Force.

Those reports recognized that the defining factor of a visible minority is colour, sometimes together with a dress standard dictated by creed. They made important recommendations intended to result in fair, non-discriminatory treatment of visible minorities by police. They questioned the adequacy of race relations training for police officers and the hiring and promotional practices of police forces. They sought means to improve police interaction with visible minority communities. They urged limits on police use of force and demanded effective accounting for that use. They were, however, unable to require or encourage government and the police to establish effective monitoring mechanisms to ensure both the implementation of accepted recommendations and the regular review of the relations between the police and the concerned communities.

Throughout the 1980's, the lack of effective monitoring denied the police and government the ability to recognize the depth of visible minority disaffection with current policing. There was no objective assessment of the limited successes and actual inadequacies of police initiatives designed to redress perceived problems. While there have been significant attempts at reform undertaken by some police forces in the past decade, an essential present criticism is that those reforms have neither

achieved desired results nor inspired public confidence.

The critical nature of that shortcoming was expressed in a presentation before the Task Force on behalf of the Canadian Human Rights Commission:

"The worst enemy of effective policing is the absence of public confidence."

That there was a crisis in public confidence became apparent following the deaths in 1988 of Lester Donaldson and Michael Wade Lawson, both black and both shot in separate incidents by on-duty police officers from different Ontario forces. Those deaths, the circumstances of which will be determined by the criminal court process, provided the catalyst for the creation of this Task Force. The deaths led to what one person accurately described to us as "an atmosphere of mutual mistrust and pessimism."

The Honourable Joan Smith, Solicitor General of Ontario, responded to the crisis by announcing in the Legislature on December 13, 1988, the establishment of this Task Force:

"to address promptly the very serious concerns of visible minorities respecting the interaction of the police community with their own."

The terms of reference are to inquire into, and report on:

1. The training members of police forces currently receive as it relates to visible minorities.
2. Ways to improve this training and education, both for recruits and serving officers.
3. Police hiring practices and promotional processes, including the establishment of employment equity programs.
4. Ways to improve the interaction of the police with the visible minority communities through the establishment of liaison officers, committees, community education programs and race relations training.
5. Ways in which a monitoring system may be established to provide for a regular review of

the interaction between visible minorities and the police.

6. The policies and practices of the police relating to the use of force.

The Task Force held public hearings in Toronto, Ottawa, Windsor and Thunder Bay. One hundred and eighteen oral presentations were made by individual citizens, community groups, and police forces and commissions. Thirteen volumes of transcript preserve an impressive and important body of insight into the field of race relations and policing. Further, one hundred and twenty-seven written briefs were presented.

The Task Force sought detailed information from Ontario's 121 police forces through a lengthy questionnaire on issues of relevance. There was an outstanding response of 99 completed and returned. Private information gathering sessions were held with representatives from police educational institutions, with some individual visible minority police officers and with private consultants. A computer-assisted literature search permitted review of over two hundred items related to our terms of reference.

It is clear that our whole society is engaged in an evolving process of learning the implications of our changing demographics. All of us, majority and minority, are participants in the challenge of change. Coping with diversity is a learned skill for all people, regardless of background. The police are not excepted from this challenge. The process requires commitment, re-evaluation, vigilance, long memory, and the ability to learn and recover from setbacks.

The police should be encouraged that almost all who presented to the Task Force were thoughtful. They were all but unanimous in their expressed belief in the value of policing appropriate to a democratic society, and in their approval of the quality of most services provided by their local police forces. However, they also convinced us the visible minority communities do not believe that they are policed in the same manner as the mainstream, white community. They do not believe that they are policed fairly, and they made a strong case for their view which cannot be ignored.

There is no tenable argument for accepting racism in policing. If racism exists, it must be confronted and

changed or removed. The Task Force, however, is concerned that it be understood that it is the critically important police function which places police at the forefront of the need for institutional change. The vital police function is often fulfilled in circumstances which are difficult and charged with emotion. The issue is not that police are worse than the rest of us, but that what is worst in all of us is capable of being revealed with serious consequence when tested in a policing circumstance.

The challenge is to sustain and improve effective policing while eliminating the alienation of visible minority communities. Colour, race, place of origin and creed must neither be, nor perceived to be, triggers for discrimination on the part of the police, one of our most important public institutions. Public support of high quality policing is a given in Ontario. Police must provide, and be perceived to provide, their service to all with the fairness necessary to ensure the public confidence required for effective policing.

We believe that government and the police bear the responsibility for change which meets public demand for effective civilian control of the police in our democratic and pluralistic society. There must be mechanisms through which the public can require police standards, policies and practices to meet publicly set objectives. The police must be made accountable to the public to a degree much greater than is now the case.

Most police officials appearing before us restated their commitment to fairness and equity and revealed genuine grief that their pledge may not be accepted. Police must understand that their reputation will not founder, nor will they be brought into disrepute if they accept public criticism as helpful. Public approval and confidence will be the result of visible and credible efforts by police to assess the nature and degree of racism in police forces, to eliminate organizational factors which perpetuate prejudice and to punish discriminatory behaviour.

Conversely, failure to achieve congruence with the values and expectations of the broad community will increase police alienation and loss of morale. High police morale is based on service delivery consistent with public expectation. Through values and goals shared with the public, the police receive evident job satisfaction and societal approval. The onus is on the police, as a public institution, to adapt to public demand and reflect both the public and the public values they serve.

A principal challenge to police managers will be to recognize and attack systemic causes of discrimination within police forces. Failure to do so has created a fundamental barrier to the ability of command officers to respond to race relations issues effectively. Command officers must also recognize that their attitudes to race relations issues are clearly understood within lower ranks to whom they are role models. Command officers must present themselves in a manner consistent with the ready implementation of government race relations objectives and be held accountable.

The Solicitor General told the Legislature that she views the Task Force as:

"The beginning of an action plan to remove any vestige of discrimination, or perception thereof, on the part of our police. ... Neither the reality, if such there be, nor the perception, can be tolerated for one minute longer."

We believe the need is critical. Our recommendations will require significant dedication and resources if they are to be meaningfully implemented. However, government has a present opportunity to restore a sense of justice and tranquility to this province.

The Task Force recognizes that its process, and the public outcry preceding its creation, have been painful for the Ontario Police Service. Allegations of racism, individual or systemic, are cruelly trying of police self-perception. As earlier suggested, the police must be a model to us all. The Task Force believes that, with government and public assistance, the police are now ready to accept this challenge as an inevitable demand on their tradition of public service.

This report is presented in acknowledgment of the high quality of the Ontario Police Service and in a desire to prevent the deterioration of that service through loss of public confidence. That goal cannot be met if the police and significant parts of the community share little more than mutual distrust.

Recommendations

The six headings in the terms of reference are

treated as five and re-ordered. The Task Force considers the monitoring issue as critical, and has placed "Monitoring" first. Items 1 and 2 are treated as one issue under the heading "Race Relations Training."

We have also added, as related issues, sections dealing with public complaints, First Nations Peoples, police commissions and police associations, under the heading "Related Issues."

The Task Force makes fifty-seven detailed recommendations which are simply highlighted in this Executive Summary.

1. Monitoring

The Task Force was consistently confronted with a deep sense of community cynicism, expressed as doubt that our process will have meaningful effect on government or the police. There has been some public loss of faith in the system's ability to deal with problems of race relations and policing, based on the belief that previous related reports and recommendations have been largely ignored.

There is some justification for this perception. Failure to provide effective monitoring of government and police response to previous recommendations, and to enable meaningful assessment of successes or otherwise of initiatives undertaken, has resulted in a cyclical pattern of crisis response. Controlled, reviewed and evaluated progress towards identified and generally accepted race relations and policing goals has been markedly absent.

The Task Force reports unequivocally that relations between police and visible minorities are at a dangerously low level. A good police and visible minority relationship is a complex process requiring constant attention, and a comprehensive plan of tangible, measurable and observable deeds. Monitoring is the key to the success of any such comprehensive plan.

We assert that a monitoring system specific to the institution of policing in relation to visible minorities is required. An imperative is the establishment of a monitoring process which will attract and maintain public confidence. To do so requires some independence from government and the police and some authority to ensure achievement of established goals.

The Task Force recommends the creation, by September,

1989, with its own statute, of an agency with appropriate staff and a Board of Commissioners, to be known as the Ontario Race Relations and Policing Review Board. We contemplate a board of three to five commissioners, all of whom are civilians, but including one or two persons with a policing background. Other related expertise in fields such as race relations, education, community development, law and employment equity should be reflected as might a majority of minority members of the board.

Members, including the chair, should be appointed by the Lieutenant Governor in Council on the recommendation of the Solicitor General.

The Ontario Race Relations and Policing Review Board is seen as having a significant role in employment equity in policing. It is proposed that this agency be empowered to approve or establish required visible minority employment equity goals and timetables for all police forces in Ontario. Further, the agency should be required, when appropriate, to recommend that the Solicitor General impose financial sanctions on police forces failing to meet those goals, and be permitted, again when appropriate, to refer such failure to the Ontario Human Rights Commission as evidence of systemic discrimination.

The agency is further intended to assist government and the police in achieving success in the implementation of accepted recommendations of this Task Force or other related government initiatives. It is contemplated that the agency have a research facility which can evaluate the degree and impact of racism in policing. Through consultation the agency should identify emerging issues, and assist in implementation of policies set by the Solicitor General and other involved parties.

The agency is intended to promote a climate of healthy interaction between visible minorities and police, and to monitor their interaction in the areas of employment, training and community relations.

The Ontario Race Relations and Policing Review Board should report quarterly to the Cabinet Committee on Race Relations, and annually to the Legislature of Ontario, through the Solicitor General, but separately from that Minister's annual report.

While the Task Force view is that an effective monitoring system must be impartial, and operate at some distance from both police and their ministerial administration, it is also our position that its primary

focus should be co-operative in encouraging achievement of understood objectives.

2. Hiring and Promotion

The Task Force recommends mandatory employment equity programs for all Ontario police forces. The face of Canadian society is changing rapidly, and current immigration patterns ensure that the representation of visible minorities in our population will increase dramatically. All Canadian institutions are challenged to reflect our new society. The need is particularly great in large urban centres. The unique police role requires special attention and sensitivity to the changing environment. If Ontario police forces are to enjoy public confidence, they must reflect and understand the communities they serve, and be so perceived.

The current composition of Ontario police forces bears little relation to the broad Ontario community. Forces are largely white and male. While some important strides in minority recruiting have occurred in recent years, they will fall far short of achieving representative forces in reasonable time frames. Few senior officers in Ontario are visible minorities.

It has been stated that visible minorities do not apply or even want to be police officers. Further, it has been suggested that employment equity programs designed to redress inequities will lower standards. The Task Force review of application statistics and promotional patterns do not support these arguments. It is apparent that success rates in recruitment and promotion are indefensibly skewed heavily in favour of white males. It is equally apparent that policing, for good reason, is not viewed as a welcoming institution by many visible minorities who might otherwise consider such a career. Rational employment equity will not lower standards. It will target merit in under-represented visible minority communities and ensure success in achieving appropriate required standards. The "lower standards" argument is an elitist, patronizing defense of the status quo and vested interest. It is rejected. Standards will be raised by enlarging the pool of candidates and reflecting the public.

The Task Force is unequivocal in its view that present hiring and promotional patterns of visible minorities and women reveal significant systemic barriers. Current composition of many Ontario police forces does not reflect Sir Robert Peel's dictum that "the police are the

public and the public are the police." Voluntary employment equity programs are not co-ordinated provincially, and are not succeeding adequately.

It is recommended that the regulations to the Police Act require each Ontario police force and its governing authority to establish and submit for approval of the Ontario Race Relations and Policing Review Board a visible minority employment equity policy and a five-year plan of hiring and promotional goals and timetables which shall be reported upon annually, and updated to maintain on-going five-year plans. The goal of all Ontario police forces being representative of the racial diversity of their served communities should be achieved by 1996.

To assist in recruiting to meet established goals and timetables, the Task Force recommends the creation of a Central Police Recruiting Unit to serve as part of the Policing Services Division of the Ministry of the Solicitor General. The Unit will not replace individual force recruitment and will not hire, but through expertise in recruiting, particularly of visible minorities, it will create and provide a pool of qualified candidates from which interested forces may draw. It will develop bias-free recruitment, testing and selection instruments and processes, and conduct research in police recruitment issues.

The Task Force recommends greater use of civilians in policing through mandatory review of all police staffing to determine which positions may be converted to civilian status. Police will be able to release officers to duties more appropriate to their training and status and obtain, with attention to minority applicants, people with special skills of value to the organization.

The police have traditionally insisted on promotion through the ranks, usually of the same police force. The Task Force finds such adherence to tradition without merit and foreign to all other institutions including the military. It is recommended that mechanisms be developed by which lateral entry by members of other forces or direct entry by qualified civilians will be accomplished, thereby allowing entry at ranks above constable. It is further recommended that an officer training program be designed and required for all senior officer candidates.

The Task Force is concerned that some minorities, such as Sikhs, are denied entry to most police forces by reason of dress code. All public institutions are required

by law to make reasonable accommodation in employment. It is recommended that Police Act regulations require all police forces to allow Sikhs to wear their religious symbols including the turban and the kirpan while on duty. Further, no person should be denied police employment by reason of religious dress or other requirement which can be reasonably accommodated.

3. Race Relations Training

The Task Force believes effective race relations training for police is required urgently. It is important that such training not merely stand alone, but that it be integrated throughout all police training. Such training will be enhanced if increased general education levels of police are required and further encouraged, and if regular police training is standardized and upgraded.

We recommend that all recruits have achieved a minimum grade 12 education or its equivalent and that there be generous allowance for upgrading to permit university admission and graduation. We recommend that the Solicitor General assume responsibility for setting and maintaining the standards for all police training in Ontario. A comprehensive review, assessment and where required, revision of such training is recommended. Further, all applicants to police forces should be required to complete successfully such a revised training program at the Ontario Police College before employment as a police officer.

The Task Force recognizes that the existing "Coach Officer" program is important in training probationary constables, but recommends that consistent, high standards be set for the training and re-training of coach officers, and that monitoring of the coach officers and of the program generally be instituted and on-going.

Further, the Task Force recommends that all officers be required to attend the Ontario Police College for a four-week refresher training course at five years of service and every five years thereafter. The College must be required to ensure that such refresher training includes a significant, professionally evaluated race relations component and to integrate race relations issues throughout the curriculum.

The Task Force believes all current police race relations training in Ontario to be inadequate in content, delivery, and, to some degree, in commitment. We believe that police should remain involved in the creation and delivery of race relations training, but that they are not

equipped to do so without considerable civilian, professional assistance.

The concern of the Task Force as to the quality and deleterious effect of existing programs is so great that we recommend an immediate moratorium on all Ontario police race relations training pending an immediate review and then replacement of all existing programs. We recommend the use of civilian consultants to assist in this process. New programs, including integration of race relations issues throughout police training, should be designed by June 1990, in force by December 1990, and be reviewed annually for the first three years and every five years thereafter by the Ontario Race Relations and Policing Review Board. The training must be provided to command officers and to members of police governing authorities as well as to junior officers.

Further, it is recommended that, with the assistance of civilian consultants, a train-the-trainers program be developed by January, 1990 for all Ontario police race relations training officers.

We recommend requiring candidates for hiring or promotion to serve an internship of two to three months with a visible minority community organization.

4. Use of Force

The public have vested in police considerable authority to use force, including deadly force. That trust must be balanced by accountability. Any killing by police in what appears to be other than extreme circumstances is of concern. The impact of such deaths or, in some circumstances, use of lesser force on the relationship between police and visible minority groups is obvious when a minority individual is involved. It is important to all citizens that police use force only when appropriate, in accordance with clear and justifiable guidelines, and with sufficient training and skill to minimize its necessity.

Of particular concern is existing statutory permissiveness of the use of deadly force. The Task Force recommends that Regulation 790 of the Ontario Police Act be partially revoked and partially amended to limit officers to shooting only in defence of life or to call for assistance in a critical situation.

Further, we share widespread concern that the Criminal Code of Canada permits police discretion in the

use of firearms to an unacceptable degree. Section 25(4) of the Code permits an officer lawfully proceeding to arrest to shoot a suspect who attempts to escape unless that can be prevented by less violent means. That "fleeing felon" rule renders the most minor offender subject to loss of life at the hands of the police. We recommend that the Government of Ontario petition the Government of Canada to amend S.25(4) of the Code to restrict its applicability to circumstances in which the fleeing offender poses immediate threat of death to police or others.

Training in the use of force and of firearms is an ongoing need. We recommend increased tactical training which will encourage recognition of ways to avoid the use of deadly force. We recommend training use of computerized "shoot-don't shoot" scenarios, and annual firearms re-training and re-qualification. We also recommend that officers be required by regulation to file use of force reports for analysis by the Policing Services Division.

A matter of considerable community concern involves the issue of police investigating police after a police shooting. Current Ontario practice of having a different police force investigate the one involved has not satisfied demands for civilian investigation. The Task Force recommends a blended approach in which the Solicitor General shall create an investigative team comprised of homicide investigators chosen from forces other than that involved in the shooting together with at least two civilian members drawn from government investigative agencies independent of the Ministry of the Solicitor General. Further, delay in investigations and lack of information are debilitating of police relations with the community. We recommend that such a team release appropriate information as to the progress of the investigation and that, if warranted, criminal charges be laid within thirty days unless longer investigation is expressly justified.

5. Community Relations

The Task Force heard many examples of alleged racial discrimination by police and of alleged police harassment of visible minority or native Canadian citizens. To the extent that such exist they cannot be tolerated. Definitions of acts of police racial discrimination and harassment must be formulated, and, once defined, subject to sanctions. We recommend that the definition and sanction for racially prejudiced behaviour, whether directed at persons within or outside the police force, be

included in the Regulations under the Police Act.

It is clear that community expectations can best be understood and met if there is a greater return to community policing approaches as opposed to the apparent development of isolated and reactive policing. Community policing is pro-active, preventive in concept, and rooted in the public desire and willingness to work with police to improve the quality of neighbourhood life. It promotes frequent voluntary contact between the public and the police. It provides police with knowledge, skills, and motivation appropriate to service provision beyond law enforcement.

The Task Force believes that community-based policing is critical to improve relations between the police and visible minority communities. There is a need for the development of a new breed of police officer, aware that law enforcement represents only a portion of proper police function and that provision of other services is an important and commendable part of police duty.

The Task Force recommends that the Solicitor General select community policing models appropriate for Ontario police forces and encourage commitment by forces and their governing authorities to community policing.

We recommend the establishment of race and ethnic relations units when the visible minority population so warrants. Each force at a minimum should assign such responsibility to a senior officer. Service in such units should be reserved for those interested and with aptitude, and should be viewed positively in the promotional process. We recommend that race and ethnic relations units have a central role in policing and report directly to the Chief or Deputy Chief of Police.

We recommend that community consultation committees representative of the local racial mix be established, and funded if necessary, to meet regularly with senior officers of forces. We recommend that chiefs of police of forces with more than 100 members, whose communities are racially diverse, establish and meet regularly with visible minority advisory committees to discuss issues or concerns which affect the force and visible minorities.

The Task Force is concerned that critical events result in police and community trauma. Turmoil following the deaths of Lester Donaldson and Michael Wade Lawson illustrates the failure of institutions to respond

effectively to community questions and concerns. The result was an expression of community outrage and institutional defensiveness which severely damaged the race relations climate. We recommend that the Solicitor General, in broad consultation, develop a crisis response mechanism for adoption and use by government, police and community organizations.

The media can be a potent force for good or ill in the dynamic of police relations with visible minorities. Publication of unnecessary information about crimes and charges can create or fuel negative attitudes about an entire group. Stereotyping is a constant danger. The Task Force recommends that each force develop a policy regarding the release of information relating to race and crime. The race or colour of an accused should never be publicized. The racial characteristics of wanted suspects should only be referred to when they are an investigative requirement.

6. Related Issues

a) Public Complaints

Although our Terms of Reference do not include mechanisms to deal with public complaints against the police, many of those presenting have urged us to consider the issue. We have forwarded to government the 22 written briefs and the transcripts of the 52 oral presentations in which demand was made for mandatory, province-wide independent civilian review of allegations of police misconduct against members of the public.

The Task Force did note that its public hearings suggest a considerable need for a consistent approach to the issue. It is patently obvious that a publicly credible, accountable and independent civilian mechanism for public complaints is basic to responding to allegations of racial intolerance or other misconduct by all police. General public confidence in all police would be enhanced.

b) First Nations Peoples

Native people emphasized before us that they are not visible minorities, but described treatment of them by police in much the same terms as did most visible minority presenters. Native presentations were unwavering in the message that native people do not believe that they are fairly policed. Those presentations were devastating in their statements of despair and of powerlessness in the face of the whole of the justice system. They argue, with

conviction, that they are viewed stereotypically by the police with terribly negative results.

While we lack the mandate, expertise, time for study and native representation essential to assess and make meaningful recommendations on this complex matter of native justice, it is clear that, at a minimum, all native peoples require the advantage of all other recommendations made in this report.

We recommend that the Government of Ontario initiate, in concert with the Government of Canada and representatives of native people, the establishment of a tri-partite task force to study the feasibility, structure and processes of native justice systems in Ontario, and to recommend working models as pilot projects.

c) Police Commissions

The accountability of police was a constant theme during the Task Force hearings. For many, the role, authority and responsibilities of police commissions is unclear.

Police commissions owe allegiance to the community they represent. They are not appointed to be principal civilian apologists for the police. They are to infuse civilian direction, consistent with the ideals of policing in a democratic society, into a service which has para-military organizational emphasis. A core responsibility of police commissions is the achievement of harmonious relations between the police and all segments of the community.

Until police commissions achieve independence and control, their ability to direct their forces and ensure race relations tranquility will be fettered or negated.

We recommend that the role, authority and responsibilities of police commissions be clearly defined in the Police Act. We recommend that the Solicitor General retain a residual authority to name the chair of each commission, and to remove commissioners and, if necessary, police command officers, who abdicate their statutory responsibility. We also recommend enhanced independence of police commissions through requiring them to be housed and staffed separately from the police.

d) Police Associations

We recognize the integral role which police associations play in setting the climate of visible minority and police relations. They owe a great deal of considered leadership to their members. They will serve their members well if they assist them to achieve positive change in their changing environment.

Police morale bears direct relation to the degree to which police resemble their community and reflect and respond to its needs and demands. Police associations bear an important responsibility in accomplishing that quality and fairness in policing which will attract the widespread community support necessary to high police morale.

Conclusion

The Deputy Solicitor General, Stien Lal, in his presentation to the Task Force, said that the Solicitor General has placed the highest priority on multicultural policing. He stressed that the Minister has stated:

"the government's commitment to proceed with the blueprint for action which will result from these deliberations."

In 1977, Walter Pitman wrote Now Is Not Too Late. This Task Force cannot state too strongly that, in 1989, now is the time. The need is critical.

In his presentation to us, Miah Bailey, Vice-President of the Jamaican Canadian Association, said:

"We at the Jamaican Canadian Association have always maintained that co-operation and communication between different sections and interests in our society were absolutely necessary for positive change However, we also wanted to make it clear that our patience is not inexhaustible."

Ted Montour, appearing on behalf of the Assembly of First Nations of Canada, said:

"What we face here is not unlike the situation with respect to acid rain ... the time for study is past and it is time to act."

Government might be encouraged to act by the comments to the Task Force by Maxwell Yalden, Chief Commissioner of the Canadian Human Rights Commission, who said when asked whether government initiatives can redress inequity and improve race relations and policing:

"Will it work? Oh yes, it will work. The question is how long it will take to work. You see, it will work because we're on the side of history and whoever is on the side of history always wins."

The Task Force believes that it is time to ensure that victory.

APPENDICES

APPENDIX A

SUPREME COURT OF ONTARIO

This is to Certify that the annexed document, each page of which is stamped with the seal of the said Court as identifying the same, is a true copy of the endorsement of the Associate the Chief Justice of the High Court, the Honourable Mr. Justice Gray, and the Honourable Mr. Justice Ewaschuk, given on the appeal dated the 8th day of March, 1989.

B E T W E E N :

POLICE CONSTABLE JOHN MILLS and
POLICE CONSTABLE DWIGHT STONEMAN

Appellants

-and-

THE ATTORNEY GENERAL OF ONTARIO and
MICHAEL McMORROW

Respondents

Given under my hand and seal of the said Court, atToronto.....
this10th..... day ofMarch..... 19.89..
being an officer duly authorized to give this certificate.

Associate

Justice

SUPREME COURT OF ONTARIO

(DIVISIONAL COURT)

IN THE MATTER OF the Metropolitan Toronto Police Force
Complaints Act, S.O. 1984, c.63;

AND IN THE MATTER OF Police Constable John Mills and
Police Constable Dwight Stoneman, Members of the
Metropolitan Toronto Police Force:

AND IN THE MATTER OF Michael McMorrow, Complainant;

AND IN THE MATTER OF a Decision of the Board of Inquiry
dated May 12, 1987, and August 24, 1987.

B E T W E E N :

POLICE CONSTABLE JOHN MILLS AND
POLICE CONSTABLE DWIGHT STONEMAN

Appellants

- and -

THE ATTORNEY GENERAL OF ONTARIO AND
MICHAEL MCMORROW

Respondents

APPEAL BOOK

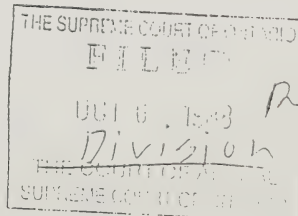
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Brian Gover
Counsel for the Respondents



DIVISIONAL COURT.

BEFORE *The A.C.J.H.C. Callaghan*

May 1/89 *twaschuk*

DATE *Mar. 80/89*

DISPOSITION - THIS APPEAL

~~APPLICATION IS~~ *dismissed*

The finding of the Board that the complainant (McMahon) was kicked by one of the appellants is, on a totality of evidence, one which the Board could reasonably have reached. It was submitted that the Board did not resolve the conflicts in the evidence as to the force of the blow which caused the injury to the eye of the complainant and in so doing erred. The Board based its decision on all the testimony + exhibits filed. (Rec. p 26-31). In our view the totality of that evidence is adequate to support the Board's ruling. We are satisfied that the Board weighed the evidence of the complainant rejecting some of it. The weight the Board attributed to that evidence, as parts of it, does not raise a question that "is not a question of fact alone" within s 24(3) of the Police Force Complaints Act ^{SO 1984 c 63} and accordingly this Court has no jurisdiction to interfere with the ruling of the Board on this matter.

No order as to costs
For further ACT 114



Government
of Ontario

Metropolitan Toronto Police Force Complaints Act, 1984

Statutes of Ontario, 1984
Chapter 63

as amended by
1986, Chapter 31

and

Ontario Regulation 494/85

CHAPTER 63

Metropolitan Toronto Police Force Complaints Act, 1984

1. In this Act,

Interpretation

- (a) "Bureau" means the Public Complaints Investigation Bureau;
- (b) "chief of police" means the chief of police of the Metropolitan Police Force;
- (c) "Commissioner" means the Public Complaints Commissioner appointed under this Act;
- (d) "complainant" means a member of the public who makes a complaint in accordance with the provisions of this Act;
- (e) "complaint" means an allegation or allegations, made orally or in writing, by a member of the public, concerning the misconduct of a police officer;
- (f) "inquiry" means an allegation or allegations concerning conduct of a police officer that does not amount to "misconduct";
- (g) "misconduct" means an act or omission on the part of a police officer that constitutes an offence under the Code of Offences set out in the Schedule to Regulation 791 of Revised Regulations of Ontario, 1980, made under the *Police Act*;
- (h) "officer in charge" means the police officer who at any particular time, while on duty, is in charge of and responsible for, the proper functioning of a police facility;
- (i) "police officer" means a police officer on the Metropolitan Police Force;
- (j) "prescribed" means prescribed by the regulations;

R.S.O. 1980,
c. 381

(k) "regulations" means the regulations made under this Act;

(l) "subject officer" means a police officer who is the subject of a complaint. 1984, c. 63, s. 1.

Application
of Act

2. This Act applies to complaints and inquiries made by members of the public respecting the conduct of police officers on the Metropolitan Police Force and hearings under this Act and disciplinary proceedings under the *Police Act* and the regulations thereunder arising out of such complaints. 1984, c. 63, s. 2.

R.S.O. 1980,
c. 381

Appointment
of Public
Complaints
Commissioner

3.—(1) The Lieutenant Governor in Council shall appoint a Public Complaints Commissioner, to hold office for a term not exceeding five years, to exercise the powers and perform the duties assigned to him by this Act and the regulations.

Re-
appointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding, in each instance, five years.

Officers,
etc.

(3) Such officers and employees as are considered necessary from time to time for the purposes of this Act may be appointed under the *Public Service Act*.

R.S.O. 1980,
c. 418

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received by him under this Act.

Monitoring
handling of
complaints
and inquiries

(6) The Commissioner shall monitor the handling of complaints and inquiries by the Bureau and the chief of police.

Annual
report

(7) The Commissioner shall report annually on the affairs of his office to the Solicitor General and to the Attorney General and the Attorney General shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Summary of
decisions

(8) The Commissioner shall cause to be prepared and published periodically a summary of the decisions, and the reasons therefor, made by the boards of inquiry under this Act.

Audit

(9) The accounts of the Commissioner shall be audited annually by the Provincial Auditor. 1984, c. 63, s. 3.

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry.

Panel for
boards of
inquiry

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Recommendations
for
appointment

(3) One-third of the members of the panel shall be persons, other than police officers, the appointment of whom the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association have jointly recommended in writing to the Attorney General. 1984, c. 63, s. 4 (1-3).

Idem

(3a) If the joint recommendations referred to in subsection (3) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General.

Failure to
make joint
recommendations

(3b) Before making the recommendation referred to in subsection (3a), the Attorney General and the Solicitor General shall consider any recommendations made by the Metropolitan Board of Commissioners of Police alone or the Metropolitan Toronto Police Association alone. 1986, c. 31, s. 1, *part*.

Individual
recommendations to be
considered

(4) One-third of the members of the panel shall be persons recommended by the council of The Municipality of Metropolitan Toronto to the Attorney General for appointment. 1984, c. 63, s. 4 (4).

Idem

(4a) If the recommendations referred to in subsection (4) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General. 1986, c. 31, s. 1, *part*.

Failure to
make
recommendations

(5) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years.

Term

4 Chap. 63 POLICE FORCE COMPLAINTS Sec. 4 (6)

Idem (6) Recommendations made under subsections (3) and (4) shall be submitted to the Attorney General within such time as he may specify.

Members of
Police
Complaints
Board under
1981, c. 43 (7) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and 1981, c. 43 (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (4) of this section, respectively.

NOTE: Subsection 34 (1) as mentioned in subsection (7) above repealed the *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43. See—1984, c. 63, s. 34 (1).

Remuneration (8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council. 1984, c. 63, s. 4 (5-8).

Establishment
of Bureau 5.—(1) The chief of police shall establish and maintain for the purposes of this Act a branch of the Metropolitan Police Force to be known as the Public Complaints Investigation Bureau.

Staff (2) The chief of police shall ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints and inquiries. 1984, c. 63, s. 5.

Where
complaints
may be made 6.—(1) A member of the public may make a complaint at the Bureau, at any police station in Metropolitan Toronto or at the office of the Commissioner.

Information (2) The person who receives the complaint shall record the complaint in the prescribed form and shall furnish the complainant with a prescribed statement that sets out the procedures that will be followed respecting the complaint and the rights under this Act of the complainant, together with a copy of the complaint.

Preliminary
investigation (3) Where a complaint is recorded at a police station, the officer in charge of the station shall take all reasonable steps to ensure that all available evidence is gathered that may be lost if not secured immediately and, if appropriate, ensure that such other preliminary investigation as may be warranted is conducted and that a report concerning such preliminary

investigation is prepared and forwarded to the person in charge of the Bureau.

(4) Where a complaint is recorded at a police station, the person recording the complaint shall forward forthwith to the Bureau and to the Commissioner a copy of the complaint.

Copy of
complaint

(5) Where a complaint is recorded at the Bureau, the person recording the complaint shall forward forthwith to the Commissioner a copy of the complaint.

Idem

(6) Where a complaint is recorded at the office of the Commissioner, the person recording the complaint shall forward forthwith to the Bureau a copy of the complaint. 1984, c. 63, s. 6.

Idem

7.—(1) Where a complaint is made by a person not directly affected by the incident, the Commissioner, as soon as practicable after receiving the complaint, shall in writing notify the person directly affected by the incident that a complaint has been made under this Act and advise him that he is entitled to be the complainant.

Notification
by Commis-
sioner

(2) Where the person directly affected by the incident is not known or can not be found or does not, within thirty days of the date of the notification, file with the Commissioner a written request to be the complainant in the matter, no further action shall be taken under this Act in respect of such complaint.

Where no
action to
be taken

(3) Nothing in subsection (2) shall prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder, and the chief of police shall notify the Commissioner if any such action is taken and the result thereof and either the chief of police or the Commissioner shall then notify the complainant.

Action under
R.S.O. 1980,
c. 381

(4) For the purposes of this section a person who observes an incident shall be deemed to be a person directly affected by the incident. 1984, c. 63, s. 7.

Person
deemed
directly
affected

8.—(1) Upon receipt of a complaint, the person in charge of the Bureau may, with the consent of the Commissioner, reclassify any of the separate allegations within the complaint as an inquiry, and the complainant and the subject officer shall be notified forthwith.

Reclassifi-
cation
by Bureau
chief

(2) The person in charge of the Bureau shall determine whether any investigation is required in respect of an inquiry,

Response

6

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POLICE FORCE COMPLAINTS

Sec. 8 (2)

and if it is, cause such investigation to be conducted, respond to the complainant in writing within sixty days of receipt of the complaint and forward a copy of the response to the Commissioner forthwith.

Reclassification during investigation

(3) The person in charge of the Bureau may, during the course of an investigation under subsection (2), reclassify any of the separate allegations within the inquiry as a complaint, and the complainant, the subject officer and the Commissioner shall be notified forthwith.

Personal record

(4) No reference shall be made in the personal record of any police officer to an inquiry resolved in accordance with subsection (2). 1984, c. 63, s. 8.

Police officer to be informed

9. The person in charge of the Bureau shall inform forthwith the subject officer of the substance of the complaint in the prescribed form, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint. 1984, c. 63, s. 9.

Informal resolution

10.—(1) The person in charge of the Bureau shall consider whether a complaint can be resolved informally and, with the consent of the complainant and the subject officer, may attempt to so resolve the complaint.

Record of informal resolution

(2) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved and the complainant and the subject officer shall each signify in writing his agreement to such resolution.

Copy of record to be furnished

(3) A copy of a record made under subsection (2) shall be furnished forthwith to the Commissioner, the complainant and the subject officer.

Informal resolution

(4) A complaint may be resolved informally by the person in charge of the Bureau in accordance with the procedures in this section at any time during the course of or after an investigation.

Where complaint to continue

(5) Notwithstanding subsection (1), where the Commissioner is of the opinion that the informal resolution was obtained as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue and give reasons therefor in writing to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

(6) The decision of the Commissioner under subsection (5) shall be deemed to be made in the exercise of a statutory power of decision within the meaning of the *Judicial Review Procedure Act*.

Review of
decision
R.S.O. 1980,
c. 224

(7) A complaint may be resolved informally by the Commissioner in accordance with the procedures in this section at any time during the course of an investigation or review by the Commissioner.

Informal
resolution by
Commis-
sioner

(8) No reference shall be made in the personal record of a subject officer to a complaint resolved under this section, except where misconduct has been admitted by the subject officer. 1984, c. 63, s. 10.

No reference
in personal
record of
subject
officer

11.—(1) Where a complaint is not resolved informally, the person in charge of the Bureau shall cause an investigation to be made forthwith into the complaint in accordance with prescribed procedures.

Investigation

(2) The person in charge of the Bureau shall forward to the Commissioner, the complainant and the subject officer an interim report in the prescribed form providing a summary of the investigation to date not later than thirty days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation.

Interim
reports

(3) Notwithstanding subsection (2), the person in charge of the Bureau may decide not to make a report to the complainant or the subject officer where, in his opinion, to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the Bureau shall forthwith notify the Commissioner of the reasons for his decision.

Exception

(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report in the prescribed form to be prepared and shall forward a copy thereof to the Commissioner, the chief of police, the complainant and the subject officer.

Final
report

(5) A final investigation report prepared under subsection (4) shall,

Idem

- (a) contain a summary of the complaint and a description of the alleged misconduct by the subject officer;

- (b) contain a summary of the investigation and of information obtained from the complainant, the subject officer and witnesses, if any; and
- (c) contain a description and analysis of any physical evidence obtained.

Further investigation at request of Commissioner

(6) The Commissioner may, upon receipt of a final investigation report, request that the chief of police cause further investigation to be made into the complaint and the results of any such investigation shall be forwarded to the Commissioner. 1984, c. 63, s. 11.

Withdrawal of complaint

12.—(1) All complaints and inquiries shall be dealt with in accordance with this Act, and shall not be withdrawn except in accordance with this Act.

Notice

(2) A complainant may withdraw a complaint at any time by giving notice, in the prescribed form, to the person in charge of the Bureau, who shall forward a copy thereof to the Commissioner and the subject officer.

Where to continue as complaint

(3) Notwithstanding subsection (2), where the Commissioner is of the opinion that the complainant withdrew the complaint as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue, and give reasons therefor, in writing, to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Review of decision

R.S.O. 1980, c. 224

(4) The decision of the Commissioner to cause the complaint to continue shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Disciplinary action under R.S.O. 1980, c. 381

(5) Notwithstanding subsection (2), where a complaint has been withdrawn by a complainant, such withdrawal shall not prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder and the chief of police shall notify the Commissioner if any such action is taken and the result thereof. 1984, c. 63, s. 12.

Where complaint not to be dealt with

13.—(1) Where it appears to the chief of police that,

- (a) a complaint is frivolous, vexatious or made in bad faith;

(b) a complaint is not within the jurisdiction of this Act;
or

(c) a complaint is one that could or should be more
appropriately dealt with under an Act other than
this Act,

the chief of police may decide that the complaint or any part
thereof not be dealt with under this Act.

(2) The chief of police shall notify the Commissioner, the
complainant and the subject officer of any decision made
under subsection (1). Notice

(3) Notwithstanding subsection (1), the decision of the
chief of police shall not prevent the chief from taking any disci-
plinary action that he could otherwise take under the *Police*
Act and the regulations thereunder. Disciplinary
action under
R.S.O. 1980,
c. 381

(4) The complainant may, within thirty days of receiving
notification under subsection (2), request the Commissioner
to review the decision made under subsection (1), in which
case all the provisions of this Act relating to a review by the
Commissioner apply with necessary modifications. Review by
Commis-
sioner

(5) Notwithstanding subsection (4), where the Commis-
sioner is satisfied that there are reasonable grounds for grant-
ing an extension, the Commissioner may extend the time for
requesting a review. 1984, c. 63, s. 13. Extension
of time

14.—(1) The chief of police shall review a final investiga-
tion report and he may order such further investigation as he
considers advisable and may, unless he decides that no action
is warranted, Powers and
duties of
chief of
police

(a) cause an information alleging the commission of an
offence by the subject officer to be laid and refer
the matter to the Crown attorney for prosecution;

(b) order that one or more of the allegations contained
in the complaint be heard by a board of inquiry;

(c) cause disciplinary proceedings to be taken under the
Police Act and the regulations thereunder; and R.S.O. 1980,
c. 381

(d) after giving the subject officer ten working days to
reply, either orally or in writing, to the complaint,
counsel or caution the subject officer regarding his
conduct,

but where the chief of police takes action under clause (b), (c) or (d), he shall not take action under any other of those clauses.

Hearing
not stayed

R.S.O. 1980,
c. 381

(2) Where the chief of police causes an information to be laid under clause (1) (a), such action shall not stay any disciplinary proceedings under the *Police Act* or any hearing by a board of inquiry unless the presiding officer or the board, as the case may be, is of the opinion that the hearing should be stayed until the court proceedings have been concluded.

Review by
Commis-
sioner

(3) A subject officer may within thirty days of the taking of any action under clause (1) (d), request the Commissioner to review the action, in which case all the provisions of this Act relating to a review by the Commissioner shall apply with necessary modifications.

Extension
of time

(4) Notwithstanding subsection (3), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review.

Expunging
from
personal
record

(5) Any action taken under clause (1) (d) shall be expunged from the personal record of the subject officer upon the expiration of a period of two years during which no other disciplinary action has been noted on the record.

Notice of
action taken

(6) The chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Commissioner, the complainant and the subject officer and, where his decision is that no action is warranted or he has taken action under clause (1) (d), the chief of police shall give his reasons therefor.

Designation
by chief
of police

(7) The chief of police may designate any police officer of the rank of inspector or higher to exercise any of his powers and perform any of his duties under this Act and the police officer so designated has the powers and duties set out in the designation and where any power is conditional on the opinion of the chief of police, the requisite opinion shall be that of the police officer so designated. 1984, c. 63, s. 14.

Application
of s. 23
R.S.O. 1980,
c. 381

15.—(1) Where the chief of police has caused disciplinary proceedings to be taken under the *Police Act* and the regulations thereunder, subsections 23 (6), (8), (13), (14) and (15) of this Act apply with necessary modifications to a hearing held in connection with such proceedings.

(2) The chief of police or, if he is not the person who holds a hearing referred to in subsection (1), the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the Commissioner, the complainant and the subject officer. 1984, c. 63, s. 15.

Notice of
decision

16. Where a hearing referred to in subsection 15 (1) has been held and a penalty has been imposed upon a subject officer, the officer may appeal in accordance with the provisions of this Act and not as provided in the *Police Act* and the regulations thereunder. 1984, c. 63, s. 16.

Police officer
may appeal

R.S.O. 1980,
c. 381

17.—(1) A notice of appeal under section 16 shall be served on the Commissioner and the chief of police within fifteen days after the subject officer receives notice of the penalty imposed, and the Commissioner shall notify the complainant forthwith.

Notice of
appeal

(2) Where a notice of appeal is filed after the time set out in subsection (1), the Commissioner shall assign, in accordance with the regulations, the matter to a member of the panel appointed on a recommendation made under subsection 4 (2) who may, if satisfied that there are reasonable grounds for doing so, extend the time for appealing and give such directions as he considers proper consequent upon the extension. 1984, c. 63, s. 17.

Extension
of time

18.—(1) Notwithstanding any other provision of this Act, the Commissioner may investigate the allegations in the complaint,

Commis-
sioner
may
investigate

- (a) at any time after he receives the first interim report under subsection 11 (2) or the thirty-day period mentioned therein has expired;
- (b) upon the request of the chief of police; or
- (c) where he has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 11.

(2) A decision to take action under clause (1) (c) shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Review of
decision

R.S.O. 1980,
c. 224

(3) The Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an investigation under clause (1) (a) or (c) and shall give his reasons therefor in writing.

Notice
to chief
of police

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Idem (4) Where the Commissioner conducts an investigation under subsection (1), he shall forward to the complainant, the subject officer, the person in charge of the Bureau and the chief of police an interim report in the prescribed form providing a summary of the investigation to date, not later than thirty days after he has given notification of his intention to conduct an investigation, and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation, and upon the completion of his investigation he shall prepare a final investigation report and forward a copy thereof to the same persons.

Notice of
action taken (5) The chief of police, upon receipt of a final investigation report under subsection (4), shall review the report, together with any final investigation report prepared under subsection 11 (4), and shall make a decision in accordance with section 14 and shall notify all persons in accordance with subsection 14 (6).

Delegation (6) The Commissioner may designate any person appointed under subsection 3 (3) to exercise any of his powers and perform any of his duties under this Act, and the person so designated has the powers and the duties set out in the designation, and where any power is conditional upon the opinion of the Commissioner, the requisite opinion shall be that of the designated person. 1984, c. 63, s. 18.

Request
for review **19.—**(1) Where a complainant is dissatisfied with the decision made on a disciplinary proceeding arising out of his complaint that is not a decision of a board of inquiry or with action taken by the chief of police under clause 14 (1) (d) or with a decision of the chief of police that no action is warranted, he may within thirty days of receipt of notification under subsection 14 (6) or 15 (2) request the Commissioner to review the matter.

Extension
of time (2) Notwithstanding subsection (1), where the Commissioner is satisfied that there are reasonable grounds for granting an extension the Commissioner may extend the time for requesting a review.

Hearing may
be ordered (3) Where the Commissioner receives a request under subsection (1), he shall review the matter and may, after such review, order a hearing by a board of inquiry if he believes that, in the public interest, such a hearing is required or he may decide to take no further action.

Notice (4) The Commissioner shall give forthwith written notice to the chief of police, the complainant and the subject officer of

his decision under subsection (3) and, where his decision is to take no further action, shall give his reasons therefor.

(5) Where a subject officer has appealed under section 16 a hearing ordered under subsection (3) shall be heard together with that appeal. 1984, c. 63, s. 19. Where appeal under s. 16

20.—(1) For the purposes of an investigation under section 18 or a review under section 19, the Commissioner may, where he has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, after informing the chief of police, enter a police station and examine therein books, papers, documents and things related to the complaint. Powers on investigation or review

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation or review as if it were an inquiry under that Act. Powers on inquiry
R.S.O. 1980, c. 411

(3) The Commissioner may, in writing, appoint a person to make any investigation or review he is authorized to make and the person so appointed has all the powers and duties of the Commissioner relating to the investigation and the review. Appointment of person to make investigation or review

(4) The Commissioner shall issue a certificate of appointment to any person appointed to make an investigation or review under subsection (3), which certificate shall contain a photograph of the person appointed, and the person appointed, while exercising any powers or performing any duties in respect of the investigation or review, shall produce the certificate of appointment upon request. Identification

(5) The person appointed to make an investigation or review shall report the results of his investigation or review to the Commissioner. Report

(6) No person shall obstruct the Commissioner or a person appointed by him to make an investigation or review or withhold from him or conceal or destroy any books, papers, documents or things related to the investigation or review. Obstruction

(7) Where a justice of the peace is satisfied upon an *ex parte* application by the Commissioner or by a person appointed by him under subsection (3) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to an investigation or review, the justice of the peace may issue an order authorizing the person making the application, together with such persons as he calls upon to assist Search warrant

him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between 6 a.m. and 9 p.m., standard time, unless the justice of the peace, by the order, otherwise authorizes.

Removal of
books, etc.

(8) The Commissioner may, upon giving a receipt therefor, remove any books, papers, documents or things examined under subsection (1) or (7) relating to the investigation or review and shall with reasonable dispatch cause to be made copies of such books, papers or documents and return them promptly thereafter to the person from whom they were removed.

Admissibility
of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the Commissioner is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

Appointment
of experts

(10) The Commissioner may appoint an expert to examine books, papers, documents or things examined under subsection (1) or (7). 1984, c. 63, s. 20.

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the Metropolitan Board of Commissioners of Police shall forward such report along with their comments and any comments submitted to them by the chief of police or the Metropolitan Toronto Police Association, to the Attorney General, the Solicitor General and the Commissioner. 1984, c. 63, s. 21.

Where board
of inquiry to
be
constituted

22.—(1) Where,

- (a) the chief of police has ordered that a matter be heard by a board of inquiry;
- (b) a police officer has appealed under section 16; or
- (c) the Commissioner has, under subsection 19 (3), ordered a hearing.

a board of inquiry shall be constituted in accordance with this section.

(2) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a minor nature, he shall assign, in accordance with the regulations, a member of the panel who was appointed on a recommendation made under subsection 4 (2) to sit alone to conduct the hearing.

Assignment
to board
of inquiry

(3) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a serious nature, he shall assign, in accordance with the regulations, three members of the panel to conduct the hearing.

Idem

(4) Where, following a disciplinary hearing under the *Police Act* a board of inquiry is to be constituted, the board shall be constituted in accordance with subsection (3).

Constitution
of board
R.S.O. 1980,
c. 381

(5) The chairman of a board of inquiry constituted under subsection (3) or (4) shall be a person appointed to the panel on a recommendation made under subsection 4 (2), one member shall be a person appointed to the panel on a recommendation made under subsection 4 (3) and one member shall be a person appointed to the panel on a recommendation made under subsection 4 (4).

Who shall be
on board

(6) The chief of police, where he has ordered a hearing, and the Commissioner, where he has ordered a hearing, shall provide the parties with a concise statement of the allegations of misconduct to be heard by the board.

Statement
of alleged
misconduct

(7) Where, following a hearing referred to in subsection 15 (1), a board of inquiry has been constituted, the chief of police shall forward the record of that hearing, including the transcript, all documents, evidence and exhibits considered at that hearing, to the board.

Record

(8) Where the Commissioner has ordered the hearing he shall pay the costs of preparing the record. 1984, c. 63, s. 22.

Costs of
record

16

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POLICE FORCE COMPLAINTS

Sec. 23 (1)

When
hearing
de novo and
when on
record

23.—(1) The hearing before the board of inquiry shall be *de novo*, except where the chief of police has prepared a record under subsection 22 (7), in which case the hearing shall be on the record but the board may, in special circumstances, hear such evidence as the board considers advisable.

Parties

(2) The parties to a hearing shall include,

- (a) the chief of police, in respect of appeals instituted by the subject officer under section 16; and
- (b) the Attorney General, except where an appeal has been instituted by the subject officer under section 16.

Adding
parties

(3) A party may be added by the board at any stage of the hearing upon such terms as the board considers proper.

Attorney
General to
have carriage

(4) The Attorney General, where he is a party to the hearing, has carriage of the matter.

Notice of
hearing

(5) The board shall appoint a time for a hearing and give written notice thereof to the parties.

Opportunity
to examine
evidence

(6) The subject officer and the complainant shall be afforded an opportunity to examine before the hearing any physical or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Board not
to
communicate
with party

(7) The board conducting a hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Oral
evidence

(8) The oral evidence given at the hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Adjournment
for view

(9) The board may, where it appears to be in the interests of justice, direct that the board and the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Only
members at
hearing to
participate
in decision

(10) No member of the board shall participate in a decision following the hearing unless he was present throughout the

hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision shall be given unless all members so present participate in the decision.

(11) A decision of a member of a board of inquiry sitting alone and a decision of a majority of the members of a board comprising three members is a decision of the board. Decision

(12) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him within a reasonable time after the matter in issue has been finally determined. Release of documents

(13) Notwithstanding section 12 of the *Statutory Powers Procedure Act*, the subject officer shall not be required to give evidence at the hearing nor shall any statement or answer required to be given by him in respect of the complaint made against him be admitted in evidence at the hearing, except with his consent. Police officer not required to give evidence R.S.O. 1980, c. 484

(14) Where the person in charge of the Bureau or the Commissioner attempts to resolve a complaint informally and the complaint is not so resolved, any statement or admission made during such attempt by the subject officer or by the complainant shall not be admitted in evidence at the hearing, except with the consent of the subject officer or the complainant, as the case may be. Statement or admission not admissible in evidence

(15) No finding of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt. Proof of misconduct

(16) Where a board constituted under subsection 22 (2) finds the subject officer guilty of misconduct, it may, Imposition of penalty

- (a) direct that days off not exceeding five days be forfeited;
- (b) direct that pay not exceeding three days pay be forfeited; or
- (c) reprimand the police officer.

(17) Where a board constituted under subsection 22 (3) finds the subject officer guilty of misconduct, it may, Idem

- (a) dismiss the police officer from the Metropolitan Police Force, whereupon the officer is thereby dismissed;

- (b) direct that the police officer resign from the Metropolitan Police Force and, in default of resigning within seven days, be summarily dismissed;
- (c) reduce the police officer in rank or gradation of rank and in pay in accordance with the rank to which he is reduced;
- (d) direct that days off not exceeding twenty days be forfeited;
- (e) direct that pay not exceeding five days pay be forfeited; or
- (f) reprimand the police officer, which reprimand may be in lieu of or in addition to any other penalty imposed.

Notice of
decision

(18) The board shall give forthwith written notice of its decision and the reasons therefor to the chief of police, the complainant, the subject officer, the Commissioner, the Solicitor General and the Attorney General.

No reference
to hearing

(19) No reference to a hearing conducted by the board shall be made in the personal record of the subject officer unless the board has made a finding of misconduct.

Costs may
be paid

(20) The Metropolitan Board of Commissioners of Police may, in such cases and to such extent as it thinks fit, pay any legal costs incurred by a subject officer in respect of a hearing conducted by a board and an appeal under section 24. 1984, c. 63, s. 23.

Appeal

24.—(1) A party to a hearing by a board may appeal within thirty days of the decision of the board to the Divisional Court.

Solicitor
General and
Attorney
General
entitled to
be heard

(2) The Solicitor General, and the Attorney General where he is not entitled to appeal under subsection (1), are entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

What may
be appealed

(3) An appeal under this section may be made on a question that is not a question of fact alone or from a penalty imposed under subsection 23 (17), or on both the question and the penalty. 1984, c. 63, s. 24.

How notice,
etc., may
be served

25. Any notice, report or other material required to be given, furnished, forwarded or otherwise served under this Act is sufficiently served if delivered personally or sent by

prepaid first class mail addressed to the person on whom service is required to be made at his last known or usual place of abode. 1984, c. 63, s. 25.

26.—(1) Every person engaged in the administration of this Act and the regulations, including a member of the Metropolitan Police Force, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties and shall not communicate any such matter to any other person except,

Matters confidential

- (a) as may be required in connection with the administration of this Act and the regulations or the *Police Act* and the regulations thereunder;
- (b) as may be required for the due enforcement of the law;
- (c) to his counsel; or
- (d) with the consent of the person to whom the matter relates.

R.S.O. 1980.
c. 381

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

Testimony

(3) No record, report, writing or document arising out of a complaint is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

What is inadmissible in evidence

(4) No oral statement, answer or admission referred to in subsections 23 (13) and (14) is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder. 1984, c. 63, s. 26.

Idem

R.S.O. 1980.
c. 381

27. Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to a board hearing. 1984, c. 63, s. 27.

Application of 1984, c. 11, s. 146

28. The *Ombudsman Act* does not apply to anything done under this Act. 1984, c. 63, s. 28.

R.S.O. 1980.
c. 325 does not apply

Agreement
for
contributions

29. The Attorney General, with the approval of the Lieutenant Governor in Council, and The Municipality of Metropolitan Toronto may enter into an agreement to provide for the payment by the municipality to the Treasurer of Ontario on such terms and conditions as may be agreed upon of contributions in respect of the moneys required for the purposes of this Act. 1984, c. 63, s. 29.

Offence

30. Any person who contravenes subsection 20 (6), subsection 26 (1) or section 27 is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. 1984, c. 63, s. 30.

Regulations

31. The Lieutenant Governor in Council may make regulations,

- (a) respecting the reporting and publication of decisions of boards of inquiry;
- (b) assigning duties to the Commissioner;
- (c) establishing a system that provides for the assignment of panel members on a rotational basis;
- (d) prescribing forms and providing for their use; and
- (e) prescribing any matter that by this Act is required to be or is referred to as prescribed. 1984, c. 63, s. 31.

Advisory
committee

32.—(1) There shall be a committee composed of,

- (a) the Deputy Attorney General;
- (b) the Deputy Solicitor General;
- (c) the chairman of the Ontario Police Commission;
- (d) the Commissioner;
- (e) the Assistant Deputy Attorney General-Criminal Law; and
- (f) such other persons as may be jointly appointed by the Attorney General and the Solicitor General.

Duties

(2) It is the duty of the committee,

- (a) to maintain under review the practice and procedures under this Act;

- (b) to receive and consider matters brought to the attention of the committee by any person having an interest in the operation of the system for handling complaints under this Act;
- (c) to make such recommendations as the committee considers appropriate for the improvement of the system for handling complaints; and
- (d) to perform such other duties or functions as the committee may be requested to perform by the Attorney General or the Solicitor General.

(3) Any recommendations made under clause (2) (c) shall be forwarded by the committee to both the Attorney General and the Solicitor General. 1984, c. 63, s. 32. Recommendations

33. On or before the day that is three years after the day this Act comes into force, the Attorney General shall, after having reviewed the operation of the panel, the Board and the advisory committee referred to in sections 4 and 32 respectively, recommend to the Lieutenant Governor in Council whether those bodies should continue in existence or be terminated. 1984, c. 63, s. 33. Recommendation of Attorney General

Repeal **34.—**(1) The *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43, is repealed.

Proceedings continued under 1981, c. 43 (2) Notwithstanding subsection (1), the *Metropolitan Police Force Complaints Project Act, 1981* shall continue in force and apply to a complaint that is made before the day this Act comes into force, for the purpose of continuing the proceedings in respect of that complaint, but the proceedings at any Board hearing commenced after the day this Act comes into force shall be in accordance with the provisions of this Act.

35. This Act comes into force on the 21st day of December, 1984. Commencement

36. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Act, 1984*. Short title

ONTARIO REGULATION 494/85

under the Metropolitan Toronto Police Force Complaints Act, 1984

GENERAL

FORMS

1. A complaint shall be recorded in Form 1. O. Reg. 494/85, s. 1.
2. The subject officer shall be informed of the substance of the complaint in Form 1A. O. Reg. 494/85, s. 2.
3. The statement to be furnished under subsection 6 (2) of the Act to the person making the complaint shall be in Form 2. O. Reg. 494/85, s. 3.
4. A record of an informal resolution of a complaint shall be in Form 3. O. Reg. 494/85, s. 4.
5. An interim or final investigation report under subsection 11 (2), 11 (4) or 18 (4) of the Act shall be in Form 4. O. Reg. 494/85, s. 5.

6. A notice of withdrawal of a complaint shall be in Form 5. O. Reg. 494/85, s. 6.

BUREAU INVESTIGATIONS

7. An investigation under section 11 of the Act shall be pursued quickly and diligently and the investigator shall endeavour to obtain all information that may have a bearing on the complaint. O. Reg. 494/85, s. 7.
8. All information and evidence obtained in the investigation shall be recorded and preserved. O. Reg. 494/85, s. 8.
9. The investigator shall endeavour to interview the person making the complaint and the subject officer and to obtain written statements from them. O. Reg. 494/85, s. 9.
10. The investigator shall endeavour to interview the witnesses named by the person making the complaint and the subject officer and witnesses located as a result of the investigation and to obtain written statements from such witnesses. O. Reg. 494/85, s. 10.
11. The investigator shall endeavour to obtain photographs of all personal injuries or damage to property alleged and any other information and evidence that is relevant to the investigation and could only be preserved by way of photographs. O. Reg. 494/85, s. 11.
12. Where appropriate, the investigator shall attend at the scene of the alleged misconduct and obtain any relevant evidence. O. Reg. 494/85, s. 12.

13. The investigator shall endeavour to obtain all hospital records and medical reports related to the complaint. O. Reg. 494/85, s. 13.

14. The investigator shall make notes during or as soon as possible after completion of each investigative step and the notes shall be preserved. O. Reg. 494/85, s. 14.

15. Any information, notes or evidence, except physical evidence, that is required to be preserved under sections 8 and 14 shall be retained for a period of two years after the complaint is finally disposed of. O. Reg. 494/85, s. 15.

ASSIGNMENT OF PANEL MEMBERS

16. The Commissioner shall prepare three lists of names of persons appointed to the panel under subsection 4 (1) of the Act; one consisting of those persons recommended under subsection 4 (2) of the Act; one consisting of those persons recommended under subsection 4 (3) of the Act and one consisting of those persons recommended under subsection 4 (4) of the Act. O. Reg. 494/85, s. 16.

17. For the purposes of sections 17 and 22 of the Act, the Commissioner shall assign, to consider extending time to appeal or to conduct a hearing, as the case may be, the person whose name appears at the beginning of the appropriate list or lists. O. Reg. 494/85, s. 17.

18. The name of a person assigned to conduct a hearing shall, following such assignment, be removed from the beginning of the list and added to the end of the list. O. Reg. 494/85, s. 18.

19. If a person is unable to perform his or her duties or is unable to act within a time determined by the Commissioner to be reasonable, the Commissioner, upon being so informed, shall assign as a replacement the next person on the list, and the name of the person who is so replaced shall remain at the beginning of the list. O. Reg. 494/85, s. 19.

20. If, at any time, a person resigns as a member of the panel, the name of that person shall be deleted from the appropriate list. O. Reg. 494/85, s. 20.

21. If, at any time, a new person is appointed to the panel, the name of that person shall be placed at the end of the appropriate list. O. Reg. 494/85, s. 21.

APPENDIX C

Schedule

CODE OF OFFENCES

1. Any chief of police, other police officer or constable commits an offence against discipline if he is guilty of,

(a) DISCREDITABLE CONDUCT, that is to say, if he,

- (i) acts in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force,
- (ii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,
- (iii) uses profane, abusive or insulting language to any other member of a police force,
- (iv) wilfully or negligently makes any false complaint or statement against any member of a police force,
- (v) assaults any other member of a police force,
- (vi) withholds or suppresses a complaint or report against a member of a police force,
- (vii) is guilty of an indictable offence or an offence punishable upon summary conviction under the *Criminal Code* (Canada), or
- (viii) contravenes any provision of the *Police Act* or the regulations;

(b) INSUBORDINATION, that is to say, if he,

- (i) is insubordinate by word, act or demeanour, or
- (ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order;

(c) NEGLIGENCE OF DUTY, that is to say, if he,

- (i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force,

(ii) idles or gossips while on duty,

(iii) fails to work in accordance with orders, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause,

(iv) by carelessness or neglect permits a prisoner to escape,

(v) fails, when knowing where an offender is to be found, to report him or to make due exertions for bringing him to justice,

(vi) fails to report a matter that it is his duty to report,

(vii) fails to report anything that he knows concerning a criminal or other charge, or fails to disclose any evidence that he, or any person within his knowledge, can give for or against any prisoner or defendant,

(viii) omits to make any necessary entry in any official document or book,

(ix) feigns or exaggerates sickness or injury to evade duty,

(x) is absent without leave from or late for parade, court or any other duty, without reasonable excuse, or

(xi) is improperly dressed, dirty or untidy in person, clothing or equipment while on duty;

(d) DECEIT, that is to say, if he,

(i) knowingly makes or signs a false statement in an official document or book,

(ii) wilfully or negligently makes a false, misleading or inaccurate statement pertaining to official duties, or

(iii) without lawful excuse destroys or mutilates an official document or record or alters or erases an entry therein;

(e) BREACH OF CONFIDENCE, that is to say, if he,

(i) divulges any matter which it is his duty to keep secret,

(ii) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the

lawful execution of such warrant or service of such summons,

(iii) without proper authority communicates to the public press or to any unauthorized person any matter connected with the police force,

(iv) without proper authority shows to any person not a member of the police force or any unauthorized member of the force any book, or written or printed paper, document or report that is the property of the police force,

(v) makes any anonymous communication to the chief of police or superior officer or authority,

(vi) canvasses, except as authorized by the Act or the regulations, any person in respect of a matter concerning the police force,

(vii) signs or circulates a petition or statement in respect to a matter concerning the police force, except through the proper official channel or correspondence or established grievance procedure, or

(viii) calls or attends any unauthorized meeting to discuss any matter concerning the police force;

(f) CORRUPT PRACTICE, that is to say, if he,

(i) takes a bribe,

(ii) fails to account for or to make a prompt, true return of money or property received in an official capacity,

(iii) directly or indirectly solicits or receives a gratuity, present, pass, subscription or testimonial without the consent of the chief of police,

(iv) places himself under a pecuniary or other obligation to a licensee concerning the granting or refusing of whose licence a member of the police force may have to report or give evidence,

(v) improperly use his character and position as a member of the police force for private advantage,

(vi) in his capacity as a member of the police force writes, signs or gives,

without the consent of the Chief of Police, a reference or recommendation to a member or former member of the police force, or any other police force, or

(vii) without the consent of the chief of police, supports in any way an application for a licence of any kind;

(g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, that is to say, if he,

(i) without good and sufficient cause makes an unlawful or unnecessary arrest,

(ii) uses any unnecessary violence to a prisoner or other person contacted in the execution of duty, or

(iii) is uncivil to a member of the public;

(h) DAMAGE TO CLOTHING OR EQUIPMENT, that is to say, if he,

(i) wilfully or carelessly causes waste, loss or damage to any article of clothing or equipment, or to any book, document or other property of the police force, or

(ii) fails to report waste, loss or damage however caused;

(i) CONSUMING INTOXICATING LIQUOR IN A MANNER PREJUDICIAL TO DUTY, that is to say, if he,

(i) while on duty is unfit for duty through drinking intoxicating liquor, or

(ii) reports for duty and is unfit for duty through drinking intoxicating liquor, or

(iii) except with the consent of a superior officer or in the discharge of duty, drinks or receives from any other person intoxicating liquor on duty, or

(iv) demands, persuades or attempts to persuade another person to give or purchase or obtain for a member of the police force any intoxicating liquor, while on duty;

(j) LENDING MONEY TO A SUPERIOR; OR

(k) BORROWING MONEY FROM OR ACCEPTING A PRESENT FROM ANY INFERIOR IN RANK.

2. Any chief of police, other police officer or constable also commits an offence against discipline and shall be liable to punishment as provided in the regulations, if he connives at, abets or is knowingly an accessory to any offence against discipline under this code. R.R.O. 1980, Reg. 791, Sched.

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**NINTH
ANNUAL REPORT
OF THE OFFICE OF THE
PUBLIC COMPLAINTS COMMISSIONER**



1990

OFFICE OF THE POLICE
COMPLAINTS COMMISSIONER

157 Bloor Street West
Toronto, Ontario M5S 1P7

(416) 963-3564 - Administration

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June 25, 1991

Attorney General of Ontario
Ministry of the Attorney General
720 Bay Street
11th Floor
Toronto, Ontario
M5G 2K1

Solicitor General of Ontario
Ministry of the Solicitor General
25 Grosvenor Street
11th Floor
Toronto, Ontario
M7A 1Y6

Dear Mr. Attorney and Mr. Solicitor General:

Pursuant to Section 3(7) and Section 3(8) of the
Metropolitan Toronto Police Force Complaints Act, 1984, I am pleased
to enclose herein the Ninth Annual Report of the Office of the Public
Complaints Commissioner.

Sincerely,

CLARE LEWIS
Public Complaints Commissioner

am
encl.

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PART I

Overview of Complaints System

Expansion of System

COMMISSIONER'S MESSAGE

The Police Services Act, 1990 which was passed on June 28, 1990 and proclaimed in force December 31, 1990, extends civilian review of police complaints across the Province of Ontario. The Act has expanded the jurisdiction of this office throughout the province to deal with public complaints involving every Ontario police officer. The title of the Public Complaints Commissioner has been changed to the Police Complaints Commissioner. On December 31, 1990, I was appointed Police Complaints Commissioner pursuant to the new Act; with some modification, the province-wide system is essentially that which has operated in Metropolitan Toronto since 1981. A copy of Part VI of the new Act is included as an appendix to this Report.

There has been need in 1990 to prepare for the anticipated expansion. To meet the demands of the new legislation, we began planning for regional offices in Thunder Bay, Sudbury, Windsor, Peterborough, Ottawa and Mississauga. Regional offices are necessary to give any member of the public throughout Ontario the option to register a complaint directly with the Office of the Police Complaints Commissioner as well as at any police division or detachment; to permit staff of the regional offices to conduct effective monitoring and review of local and regional complaints, subject to my direction; and to ensure awareness and inclusion of local and regional issues in arriving at decisions as required by the Act.

In addition, we initiated a vigorous education programme directed at police across the province. Senior staff and I met with Chiefs of Police, Chairs and members of Police Services Boards, municipal officials and officials of police associations, to familiarize them with the requirements of the new legislation.

We have developed an investigation manual for the Public Complaints Investigation Bureaus of police forces across the province, and have travelled throughout the province conducting workshops with the staff of police complaints bureaus based on the legislation and the manual.

A brochure for police officers in English and French, outlining their rights and responsibilities under the Act, has been prepared and distributed to all police officers in the province. A public brochure has also been produced and distributed. It is now available in English and French and is being translated into other languages.

With the enactment of the new legislation, this is the last Annual Report of the Public Complaints Commissioner dealing solely with Metropolitan Toronto police. I look forward to becoming acquainted with police-community issues throughout the province, and to the challenge of expanding this valuable service to all residents of Ontario.

PART I - OVERVIEW OF COMPLAINTS SYSTEM

A. AN OVERVIEW

The Office of the Public Complaints Commissioner began operations in 1981 pursuant to provisions of the Metropolitan Police Force Complaints Project Act, 1981. That Act was replaced by the Metropolitan Toronto Police Force Complaints Act, 1984, which became law on December 21, 1984, and which is included here as Appendix A.

A basic premise of the system is that the police force has the responsibility of performing initial investigation into complaints by members of the public. The vast majority of complaints are investigated initially by the police. The Act states that the Commissioner can take over an investigation on request of the Chief of Police, or when the Commissioner has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of the investigation, or at any time 30 days or more after the complaint has been filed. A significant part of the Commissioner's function, therefore, is not initial investigation but, rather, the monitoring of the police investigation into the complaint. The Commissioner also undertakes review and re-investigation of the complaint at the request of the complainant after the Chief of Police has reached a decision on the complaint.

The monitoring function is possible because the Commissioner receives a copy of all complaints as soon as they are filed, as well as a copy of all monthly investigative reports as they are completed. The Commissioner maintains ongoing communication with the Public Complaints Investigation Bureau of the Force in regard to general issues pertaining to investigation as well as with reference to particular files.

If the complainant requests a review, the Public Complaints Commissioner can re-investigate the matter, and must make a decision about the complaint on the basis of the available evidence. If the Commissioner agrees with the decision of the Chief of Police, a review report is written and sent to the complainant, the subject officer, and the Chief of Police. Whether the Commissioner agrees or disagrees with the Chief of Police, recommendations may be made to prevent the problem encountered by the complainant from recurring. Finally, if the Commissioner believes it is required in the public interest, the case may be sent to a Board of Inquiry. The Commissioner has no further decision-making power in such cases.

The Board of Inquiry tribunal consists of either one or three civilians depending on whether the complaint is minor or serious. The Board has the responsibility of holding a hearing into the complaint. The officer is usually represented by counsel and the

complainant may also be represented. A lawyer representing the Attorney General presents the case, witnesses are called, evidence is tendered, and arguments of law are made. The legislation provides that misconduct can be established only if proved beyond a reasonable doubt. At the end of the hearing, the Board decides whether the officer is guilty of misconduct. If the Board concludes that the officer is guilty of misconduct, it may discipline the officer. Penalties range from a reprimand to dismissal from the police force.

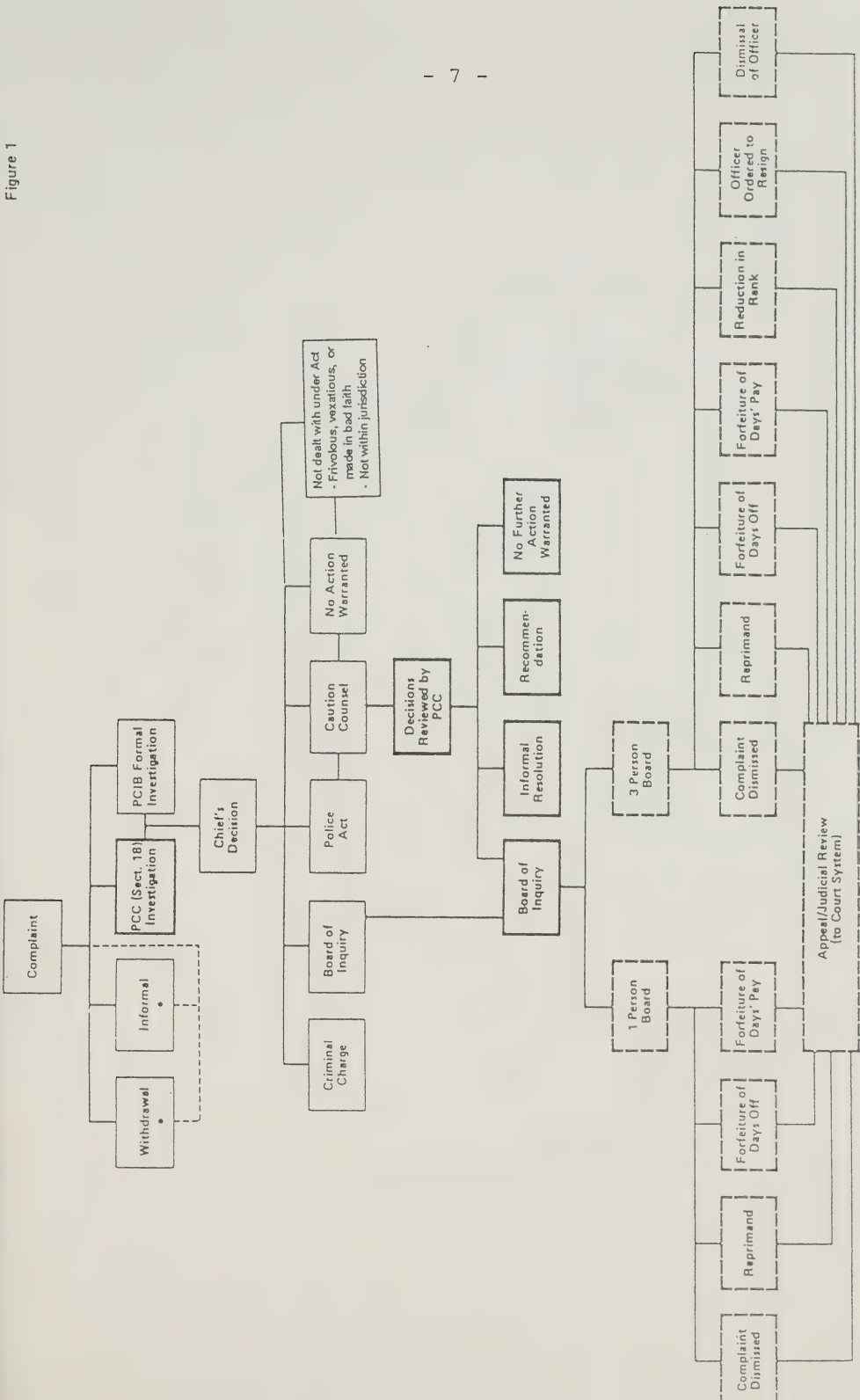
The chart in Figure 1 shows the possible stages of a complaint. These stages can be roughly divided into the police investigation and resolution stage, the Public Complaints Commissioner review stage, and the Board of Inquiry stage.

Please note that in the interest of clarity, the chart illustrates only the most commonly occurring events in the complaint system.

B. EXPANSION OF THE SYSTEM

The Police Services Act, 1990 was enacted effective December 31, 1990. Part VI of the new Act incorporates the complaint system that has been in effect in Metropolitan Toronto, and extends the jurisdiction of this Office throughout Ontario. The system of civilian review of complaints by an independent Commissioner has been extended to all municipal police forces and police officers in the province, and to the Ontario Provincial Police. The Act changes the title of the Public Complaints Commissioner to the Police Complaints Commissioner. With some modification, the system in force for Metropolitan Toronto is the basis for the mandatory province-wide expansion.

Figure 1



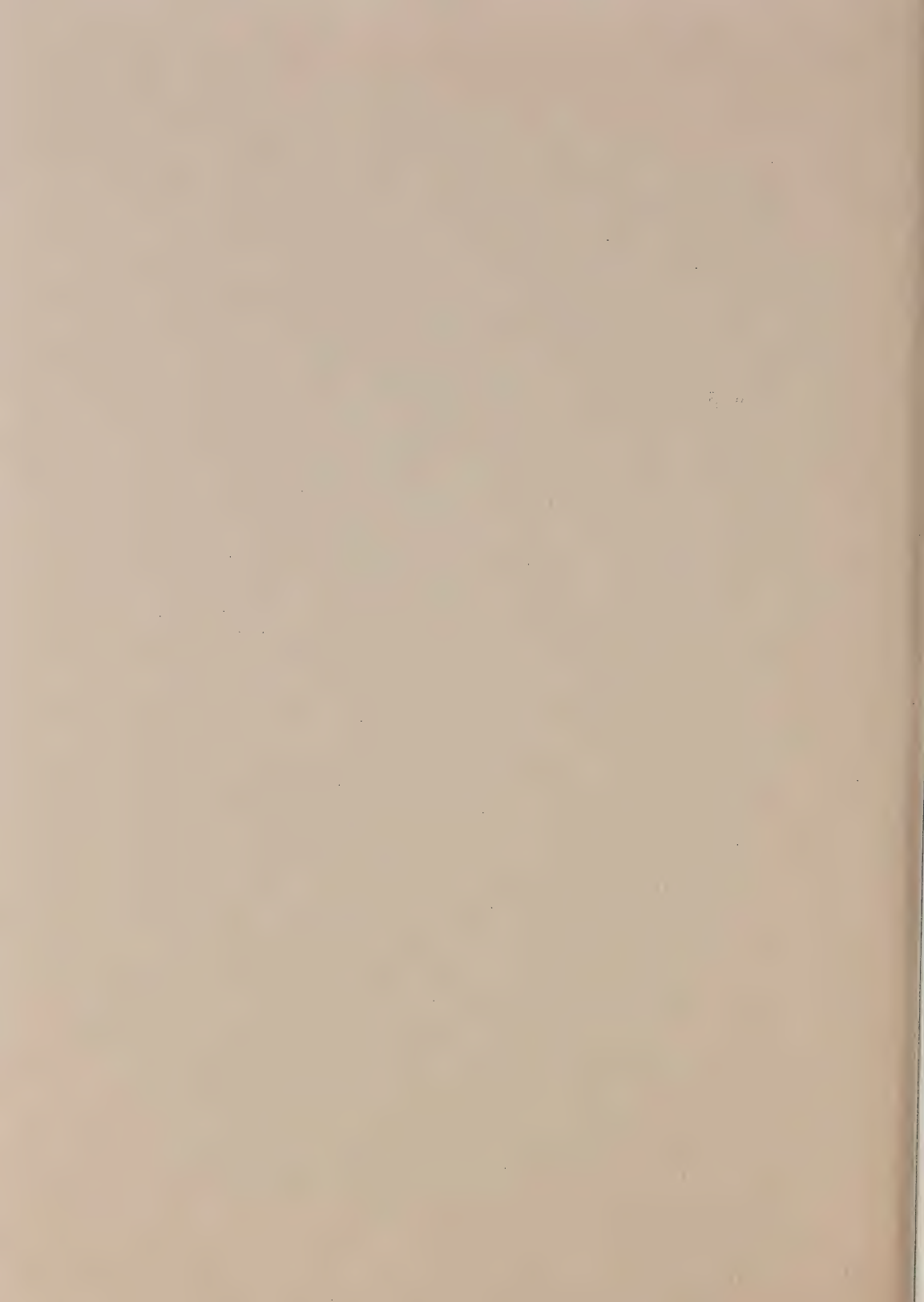
— Area handled by Police

— Area handled by Public Complaints Commissioner

--- Area handled by Board of Inquiry

* When a complaint is withdrawn or informally resolved, the Commissioner reviews the file and, in certain circumstances, has the power to overturn the withdrawal or the informal resolution. In these cases, the complaint continues through the system

PART II
Research and Statistics



PART II - RESEARCH AND STATISTICS

A. INTRODUCTION

Since its inception, the Office of the Public Complaints Commissioner has reported and analysed data taken from all closed complaint files, permitting the examination of the case-load from a statistical perspective. Careful analysis and study of complaints can also lead to suggestions for improving policing generally, and to specific recommendations for change in police practices and procedures. In addition, the research enables the Commissioner to evaluate the functioning of the complaints process.

In 1990 there were 650 cases in which a final disposition was reached. A "case" involves a single complainant making one or more allegations based on a single incident or series of incidents. A case is "closed" when all outstanding issues with respect to the allegations have been resolved. Because cases vary in complexity, they vary in duration. Some cases may be resolved quickly while others which require extensive investigation may last over a year.

B. RESEARCH DATA

1. Location of the Incident

Every complaint results from an incident in which a member of the public has some contact with the Metropolitan Toronto Police Force. The first incident may evolve into more than one contact in more than one location. The location of the primary incident is shown in Table 1. The locations are listed by frequency of occurrence, with the most common being listed first. As in previous years, the most common location of the primary incident was the street (45.6%). The next most common location was a private residence (18.8%), followed by public buildings or areas (14.9%).

TABLE 1

<u>Location of Incident</u>	<u>Number</u>	<u>Percent</u>
Street	296	45.6
Residence	122	18.8
Public Building/Area	97	14.9
Police Building	87	13.4
Police Vehicle	24	3.7
Plaza/Mall	12	1.8
Schoolyard/Park	12	1.8
TOTAL	650	100.0

2. Allegations

A single incident may give rise to several allegations. The listing of allegations is presented in Table 2. The majority of complainants (56.2%) made more than one allegation. In total, 1,254 allegations were made. For each case, details of only the six most serious allegations were recorded for statistical purposes.

There are two ways of examining the distribution of allegations. One way is by considering the total number of allegations. Thus, the 311 allegations of assault represent 24.8% of the 1,254 allegations that were documented. The other way is by considering the number of cases. Here the 311 allegations of assault represent 47.9% of the 650 cases. The percentage distributions are presented in Table 2 and Figure 2.

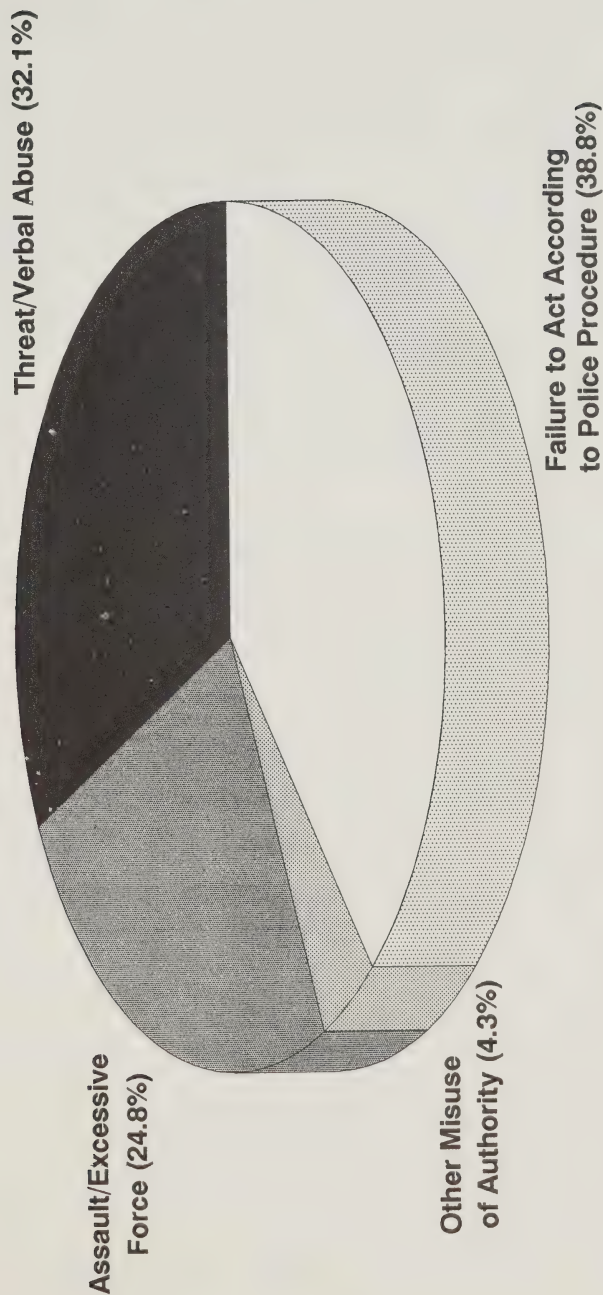
The 22 categories of allegations, grouped into four major areas, are presented in Table 2. The most common allegation is that officers failed to act according to proper police procedure (38.8%). This was followed by threatening or verbally abusive behaviour (32.1%) and by physical assaults/excessive use of force (24.8%). Misuse of authority was cited in 4.3% of the allegations. It was noted that in 56 or 8.6% of the cases, there was an allegation of improper use of a baton. These allegations included physical assault or threatening with the baton. In 32 or 4.9% of the cases, complainants alleged improper handling of police firearms.

TABLE 2

TYPE OF ALLEGATION

	(No. of Cases = 650)		
	% of		% of
	<u>Number</u>	<u>Allegations</u>	<u>Cases</u>
<u>Failure to Act According to Police Procedure</u>			
Neglect of Duty	194	15.5	30.0
Improper Search/Entry	60	4.8	9.2
Damage/Mishandle Property	54	4.3	8.3
Improper Arrest/Detention	54	4.3	8.3
Improper Charge	39	3.1	6.0
Failure to I.D. Self	37	3.0	5.7
Improper Use of Discretion	9	0.7	1.4
General	<u>39</u>	3.1	6.0
	486	(38.8)	
<u>Threat or Verbal Abuse</u>			
Incivility/Verbal Abuse	265	21.1	40.6
Harassment/Threat	124	9.9	19.1
Perceived Harassment/Threat	9	0.7	1.4
Verbal Sexual Harassment/Threat	<u>5</u>	0.4	0.8
	403	(32.1)	
<u>Physical Assault/Excessive Force</u>			
Assault with Injury	199	15.8	30.6
Assault	89	7.1	13.7
Assault while Restrained	22	1.8	3.4
Sexual Assault	<u>1</u>	0.1	0.2
	311	(24.8)	
<u>Other Misuse of Authority</u>			
Improper Driving	16	1.3	2.5
Theft/Corruption	15	1.1	2.3
Breach of Confidence	10	0.8	1.5
Deceit	6	0.5	0.9
Lying Under Oath	5	0.4	0.8
Intoxication	<u>2</u>	0.2	0.3
	54	(4.3)	
TOTAL	1,254	100.0	

Figure 2
Type of Allegation



The Commissioner, who in 1989 chaired the Ontario Task Force on Race Relations and Policing, continues to be particularly concerned with any allegation of ethnic or racial bias by the police. In 62, or 9.5% of the complaints, there was some mention of a racial or ethnic statement being made. In a further 14, or 2.2% of the cases, a racial or ethnic statement was not alleged to have been made by the police, but the complainants stated that they perceived the treatment they received as racially or ethnically motivated.

The Commissioner has observed with interest the work recently undertaken by the Ministry of the Solicitor General, toward employment equity in Ontario police forces. In addition, that Ministry is developing a race relations training package for police personnel from recruits to Chiefs of Police, and for members of Police Services Boards. It is expected that police force commitment to these initiatives will assist police to meet the challenges and recognize new opportunities for policing in our diverse society.

The Office of the Public Complaints Commissioner continues its outreach efforts to minority communities and is seeking effective means to ensure better access to, and use of, the complaint system by all members of the public and to improve police and minority liaison and relations.

In 5 or 0.8% of the cases there was some reference to a disparaging statement regarding homosexuality.

In describing the allegations, the actual incident which led to the contact between the complainant and the police was noted. It must be remembered that this notation represents the first point of contact; others may have occurred as the situation evolved. The three most common points of contact were criminal investigation (26.3%), traffic/accident investigation (24.3%) and arrest (21.7%). The remaining incidents are listed in Table 3.

TABLE 3

<u>Precipitating Factor</u>	<u>Number</u>	<u>Percent</u>
Criminal Investigation	171	26.3
Traffic/Accident Investigation	158	24.3
At Arrest	141	21.7
Domestic Incident	29	4.5
Parking Infraction	26	4.0
Request for I.D.	10	1.5
By-Law Infraction	7	1.1
Landlord/Tenant Issues	4	0.6
Other	21	3.2
None Apparent	<u>83</u>	<u>12.8</u>
TOTAL	650	100.0

In 285 or 43.8% of the cases, no charges were laid. The complainant was charged by the police in 335 or 51.5% of the cases. The details are presented in Table 4. In 99.4% of these cases, the charge was laid prior to the complaint being filed.

TABLE 4

<u>Charge Against Complainant</u>	<u>Number</u>	<u>Percent</u>
<u>Highway Traffic Act</u> Offence	146	28.3
Obstruct/Assault Police	83	16.1
Assault	35	6.8
Drug Offence	29	5.6
Theft/Possession of Stolen Goods	27	5.2
Alcohol Related Driving Offence	27	5.2
Weapons Offence	23	4.5
Liquor Offence	19	3.7
Municipal By-Law Offence	17	3.2
Property Offence	15	2.9
Cause a Disturbance/Breach of Peace	13	2.5
Break & Enter and Related Offences	12	2.3
Escape/Breach Probation	10	1.9
Criminal Driving Offence	8	1.6
Robbery/Serious Violence/Homicide	6	1.2
Public Mischief	6	1.2
Other	<u>40</u>	<u>7.8</u>
TOTAL	516	100.0

3. Injuries

There were 216 complainants (33.2%) who alleged that some sort of physical injury occurred as a result of a confrontation with police. Of these, 53 (24.5%) alleged more than one injury. The details of the 269 alleged injuries are presented in Table.5. Of the alleged injuries, 69.4% involved cuts and bruises.

TABLE 5

<u>Alleged Injuries to Complainant</u>	<u>Number</u>	<u>Percent</u>
Cuts/Bruises	187	69.4
Injuries from Handcuffs	35	13.0
Internal	16	6.0
Fractures	16	6.0
Teeth	7	2.6
Groin	4	1.5
Unknown	<u>4</u>	<u>1.5</u>
TOTAL	269	100.0

On the basis of the description in the allegations, medical reports and photographs, the office researcher made a subjective evaluation of injuries. The criteria used were as follows:

MINOR INJURIES: require little or no medical attention, such as scratches, minor headaches, etc.,

MODERATE INJURIES: have visible or identifiable signs, such as cuts, bruises, etc.; and

SERIOUS INJURIES: include fractures, teeth injuries, cuts deep enough to require stitches.

Of the 216 complainants who alleged injuries, 53 (24.5%) of the injuries were classified as minor, 75 (34.7%) were seen as being moderate, and 29 (13.4%) were serious. In 59 (27.3%) of the cases, there was insufficient information to determine the severity of injury. Of the complainants who claimed injuries, 120 (55.6%) sought medical attention or treatment for their injuries.

4. Characteristics of Officers

Most allegations (88.2%) involved fewer than five officers. Specific data were collected on the first four officers listed in each complaint. The rank of these officers is shown in Table 6. Two thirds (66.0%) of the officers cited in the complaint were constables in the First Class category (usually, an officer must have served at least four years before gaining First Class status). Just under three quarters (72.9%) of the officers had five or more years experience on the police force (Table 7).

TABLE 6

<u>Rank of Police Officer</u>	<u>Number</u>	<u>Percent</u>
Inspector or higher	4	0.4
Staff Sergeant	25	2.6
Sergeant	80	8.6
First Class Constable	617	66.0
Second Class Constable	48	5.1
Third Class Constable	65	7.0
Fourth Class Constable	<u>96</u>	<u>10.3</u>
TOTAL	935	100.0

TABLE 7

<u>Years of Service</u>	<u>Number</u>	<u>Percent</u>
Under 1 Year	47	5.0
1 to 2	121	12.9
3 to 4	86	9.2
5 to 10	182	19.5
11 to 15	276	29.6
16 to 20	132	14.1
Over 20 Years	<u>91</u>	<u>9.7</u>
TOTAL	935	100.0

72.9

5. Police Division in which Complaint Arose

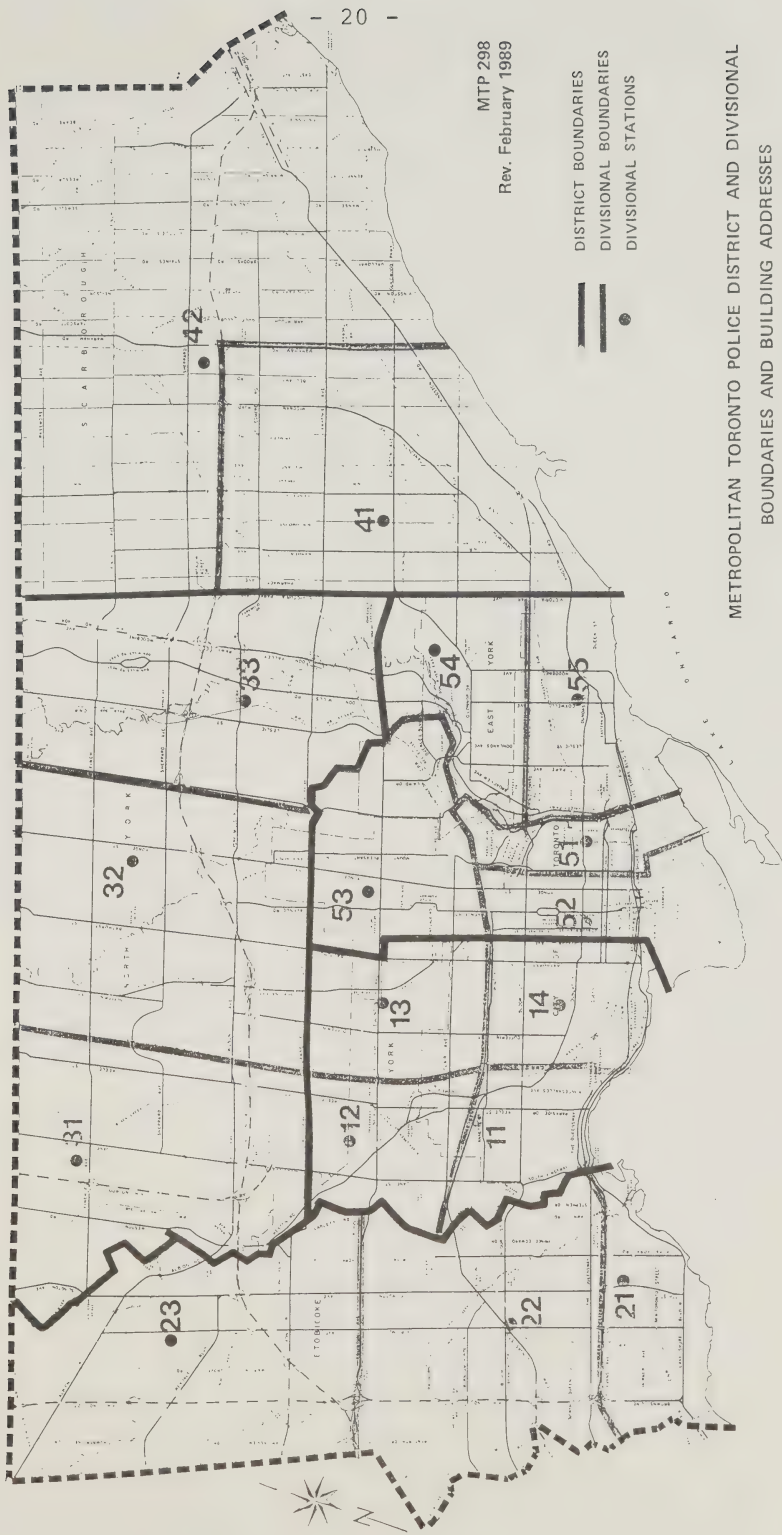
The police divisions in which the alleged incidents occurred are listed in Table 8. The largest number of complaints occurred in 52 Division (88, 13.5%). This division is responsible for the downtown core of Toronto. The next highest number of complaints (73, 11.2%) arose in 14 Division which is immediately west of 52 Division.

TABLE 8

<u>Division of Occurrence</u>	<u>Number</u>	<u>Percent</u>
11	30	4.6
12	13	2.0
13	35	5.4
14	73	11.2
21	13	2.0
22	22	3.4
23	23	3.5
31	42	6.5
32	30	4.6
33	12	1.9
41	36	5.5
42	20	3.1
43	6	0.9
51	60	9.2
52	88	13.5
53	18	2.8
54	25	3.9
55	42	6.5
Central Traffic Unit	17	2.6
Eastern Traffic Unit	4	0.6
Western Traffic Unit	4	0.6
Northern Traffic Unit	3	0.5
Other	6	0.9
Unknown	<u>28</u>	<u>4.3</u>
TOTAL	650	100.0

MTP 298
Rev. February 1989

DISTRICT BOUNDARIES
DIVISIONAL BOUNDARIES
DIVISIONAL STATIONS



METROPOLITAN TORONTO POLICE DISTRICT AND DIVISIONAL
BOUNDARIES AND BUILDING ADDRESSES
1988

6. Complaint Process Data

(a) Filing a Complaint

Members of the public can register a complaint about Metropolitan Toronto police actions at any police station, at the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force, or at the Office of the Public Complaints Commissioner at 157 Bloor Street West (either in person or by telephone). Complaints were registered at the Office of the Public Complaints Commissioner in 44.9% of the cases, at a police station in 37.2% of the cases, and at the Public Complaints Investigation Bureau in 12.0% of the cases. The remainder of the complaints were initiated elsewhere and are presented in Table 9 (see also Figure 3). Over one-third (37.6%) of the complaints were filed either the day of the alleged incident or on the next day. Most complaints (82.4%) were filed within a month of the occurrence (Table 10).

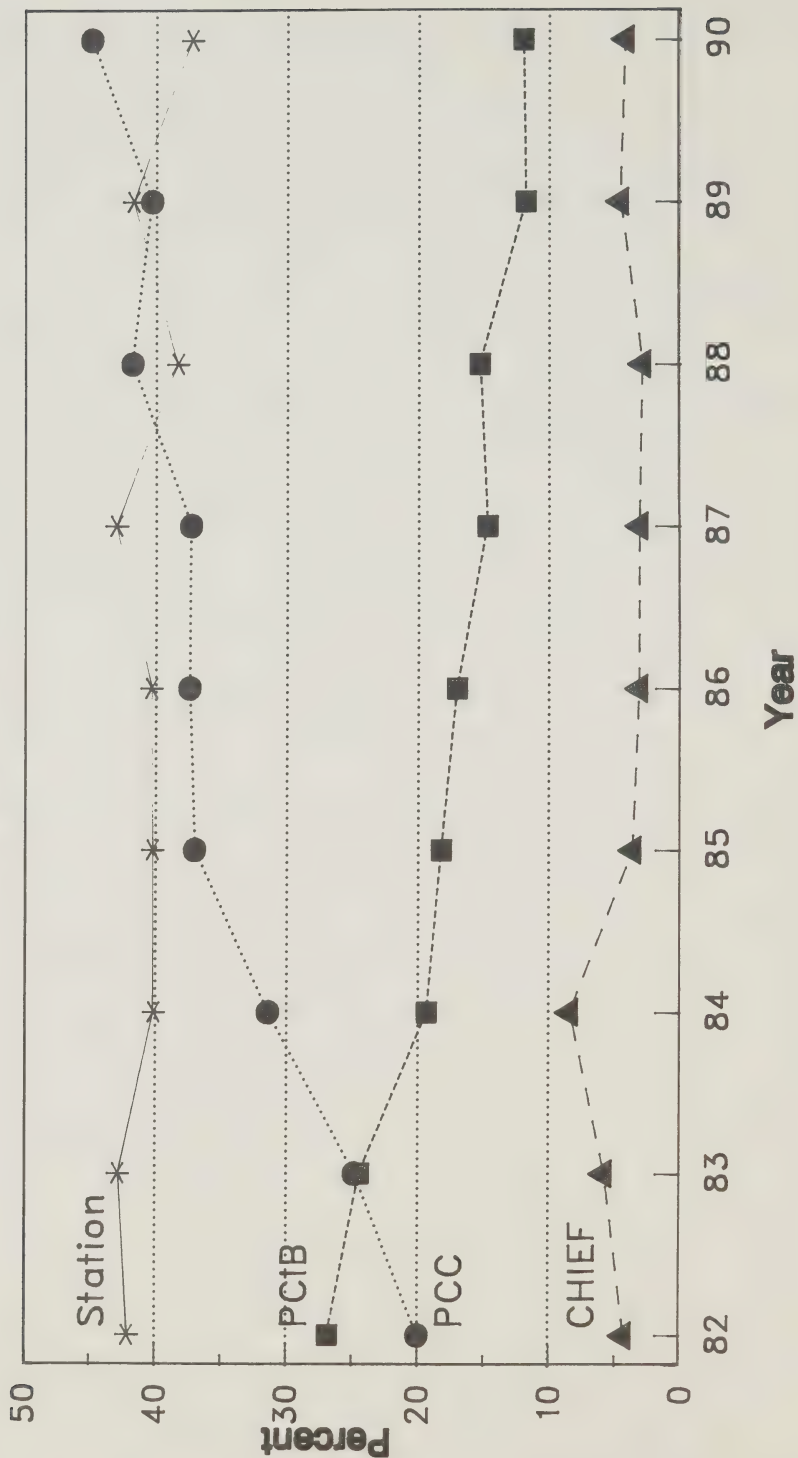
TABLE 9

<u>Location Complaint Filed</u>	<u>Number</u>	<u>Percent</u>
Office of the Public Complaints Commissioner	292	44.9
Police Station	242	37.2
Public Complaints Investigation Bureau	78	12.0
Chief of Police	27	4.2
Police Commissions	4	0.6
Other	<u>7</u>	<u>1.1</u>
TOTAL	650	100.0

TABLE 10

<u>Days: Occurrence to Filing</u>	<u>Number</u>	<u>Percent</u>
Same Day	150	23.0
Next Day	95	14.6
2 - 31 Days	291	44.8
32 - 60 Days	28	4.3
61 - 90 Days	18	2.8
Over 90 Days	54	8.3
Unspecified	<u>14</u>	<u>2.2</u>
TOTAL	650	100.0

Figure 3
Location Where Complaint Was Filed
Percent Distribution



Only most frequent locations plotted

(b) Complaint Investigation

Most complaints are initially investigated by the Public Complaints Investigation Bureau of the Metropolitan Toronto Police Force. That Bureau is headed by a Staff Inspector and staffed by Staff Sergeants and Sergeants who are charged solely with the responsibility of investigating public complaints. The Public Complaints Commissioner has a statutory duty to monitor this initial investigation. On occasion, the Commissioner may undertake the initial investigation of a complaint or take over an investigation begun by the Public Complaints Investigation Bureau.

The civilian staff of the Office of the Public Complaints Commissioner can conduct the initial investigation of a complaint in three circumstances. They are: upon request by the Chief of Police; when there is unreasonable delay or other exceptional circumstances in the ongoing police investigation; or after receipt of the first interim report from the Public Complaints Investigation Bureau or the expiration of 30 days from the filing of the complaint. The Office of the Public Complaints Commissioner carried out 44 initial investigations in 1990.

Whether an investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, the initial decision as to whether discipline is warranted is made by the Chief of Police after the investigation is completed.

(c) Informal Resolutions

In 45 cases, complaints were resolved informally. A complaint is properly resolved informally if both the complainant and subject officer(s) agree in writing to the resolution. The reasons given for the informal resolution are presented in Table 11. In 34 cases the informal resolution was effected when the officer either admitted, apologized or explained his/her actions to the satisfaction of the complainant.

In 8 cases, informal resolutions were coupled with disciplinary action. In 3 cases officers were counselled or cautioned and in 4 cases officers were advised or spoken to by their superiors. In the remaining case, 12 hours were deducted from the officer's accrued time off.

TABLE 11

<u>Analysis of Informal Resolutions</u>	<u>Number</u>	<u>Percent</u>
Officer admitted allegation, apologized or explained actions	34	75.6
Officer advised/spoken to by superiors	4	8.9
Officer counselled or cautioned	3	6.7
Complainant acknowledged possible mistake	2	4.4
Complainant content to make police force aware of complaint	1	2.2
12 hours deducted from accrued time off	<u>1</u>	<u>2.2</u>
TOTAL	45	100.0

(d) Withdrawals

In 237 cases, the complaints were withdrawn by the complainant. This amounted to 36.5% of all cases closed in 1990. Legal advice was cited by 66 complainants as the reason for withdrawing their complaints. Another 21 complainants who withdrew their complaints stated that it was their desire merely to call attention to the incident or put it on record rather than follow through with an investigation. Thirty-five complainants reported personal reasons for withdrawing their complaints. Twenty of the withdrawals were attributed to an admission of

error on the part of the complainant. The error was usually explained by the complainant having been intoxicated at the time of the incident so that a clear recollection of the events was impossible. A further 18 withdrew their complaints stating that all their concerns or allegations had been dealt with in court. In another 23 cases, the reasons for withdrawal were not stated. The remaining 54 cases were withdrawn for miscellaneous reasons. The full list of reasons for withdrawals is presented in Table 12.

This office continues to monitor all withdrawals and make inquiries of complainants as to the reason for their withdrawals to ensure that such withdrawals are not the result of misunderstanding, threats or other improper pressure.

TABLE 12

<u>Reasons for Withdrawal</u>	<u>Number</u>	<u>Percent</u>
Legal advice	66	27.8
Personal reasons	35	14.8
Not stated	23	9.7
Complainant wanted to draw attention to incident	21	8.9
Complainant admitted error	20	8.4
Concerns dealt with in court	18	7.6
Other	<u>54</u>	<u>22.8</u>
TOTAL	237	100.0

(e) Decisions by the Chief of Police

In the 368 complaints (56.6% of files closed in 1990) which were neither withdrawn nor informally resolved, investigation by either the Public Complaints Investigation Bureau of the Police or the Office of the Public Complaints Commissioner was undertaken. Throughout the investigation, investigator's reports are sent every 30 days to all involved parties including the complainant, the subject officer, and either the Office of the Public Complaints Commissioner or the Chief of Police, as appropriate. Whether the investigation is conducted by the Public Complaints Investigation Bureau or the Office of the Public Complaints Commissioner, upon completion, the file is presented to the Chief of Police or his designate for a decision.

In 100 (15.4%) of the cases, the Chief concluded that the complaint would not be dealt with under the Act. In 78 of these cases, the Chief decided the complaints were frivolous, vexatious or made in bad faith. In the remaining 22 cases, the Chief decided the complaint was not within the jurisdiction of the Act.

The Commissioner has been concerned about many of the cases which the Chief decides are not within the jurisdiction of the Act. In a number of these cases, it was clear that although

there may have been insufficient evidence to substantiate the complaint, the allegations nonetheless were within the jurisdiction of the Act since, if they had been proved, they would have constituted misconduct. This police interpretation of the power to declare a complaint non-jurisdictional has been a continuing concern of the Commissioner. However, the Police Services Act, 1990, Part VI of which has replaced the complaints legislation which was in force in the 1990 reporting year, has resolved this issue for the future by removing the authority of a Chief of Police to declare a complaint not to be within the jurisdiction of the legislation.

In most of these cases (351, or 95.4%), the Chief concluded that no further action was warranted. In 194 of the "no further action" cases, the Chief stated that there was insufficient evidence to prove misconduct beyond a reasonable doubt. In a further 42 cases, the Chief noted that the officer acted according to police procedure. In 13 cases, the Chief concluded that the evidence supported the officer's version of events. In 2 cases, the Chief offered an apology but no other action was taken.

In a total of 25 cases, some discipline of the accused officer(s) was imposed. Eight of these cases involved informal resolution, whereas 17 were formal decisions made after full investigation. (See Table 13 for a complete breakdown of

discipline imposed by the Chief.) Discipline choices available to the Chief of Police in these circumstances are as follows:

Officer Advised/Spoken To: Without making a judgment as to whether there is substance to the allegation, a superior officer informally discusses the case with the subject officer and suggests better ways of dealing with the situation.

Counsel: A superior officer acknowledges that there is substance to the allegation, but that the conduct was judged to be unintentional or resulted from inexperience. Counselling is recorded on the police officer's file at headquarters.

Caution: As above for counsel. In addition, the officer is warned that further misconduct will result in charges pursuant to the Police Act.

Charge Under Police Act: The Chief of Police may charge the officer under the Police Act. In these cases, an internal disciplinary tribunal is convened. Misconduct must be proved beyond a reasonable doubt. Employment penalties can be imposed.

Board of Inquiry: The Chief of Police may refer the case to a public hearing before a civilian board of inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984. Misconduct must be proved beyond a reasonable doubt and employment penalties can be imposed.

Charge: The Chief of Police may cause an information to be laid against the subject officer, and refer the matter to a Crown Attorney for prosecution.

Of the 17 cases in which discipline was imposed after full investigation, the Unit Commander imposed discipline in 3 cases. In one case, the officer was reprimanded; in another, the officer forfeited 2 days off. In the third, the officer was reprimanded and forfeited 2 days off. The Chief counselled the officer in 7 cases, cautioned the officer in 1 case and cautioned and counselled the officer in 1 case. In 1 case the Chief called a Board of Inquiry. In 4 cases the Chief decided to charge

officers under the Police Act. Three of these cases resulted in forfeiture of time off. In the remaining case the officer resigned and was no longer subject to the provisions of the Police Act.

In all, 11 criminal charges laid by complainants against police officers were disposed of in 1990. In 3 cases the charges were dismissed and in 8 cases the charges were withdrawn.

TABLE 13

Discipline Taken Against Police Officers

Nature of Resolution

<u>Action</u>	<u>Informal</u>	<u>Formal</u>	<u>Total</u>
Officer Spoken to/Advised	4	-	4
Counsel or Caution	3	9	12
Board of Inquiry	-	1	1
<u>Police Act</u> Charge	-	4	4
Discipline at Unit Commander Level	<u>1</u>	<u>3</u>	<u>4</u>
TOTAL	8	17	25

(f) Summary of Disposition of Complaints

Of the 650 complaints closed in 1990, the following dispositions took place:

WITHDRAWALS - 237

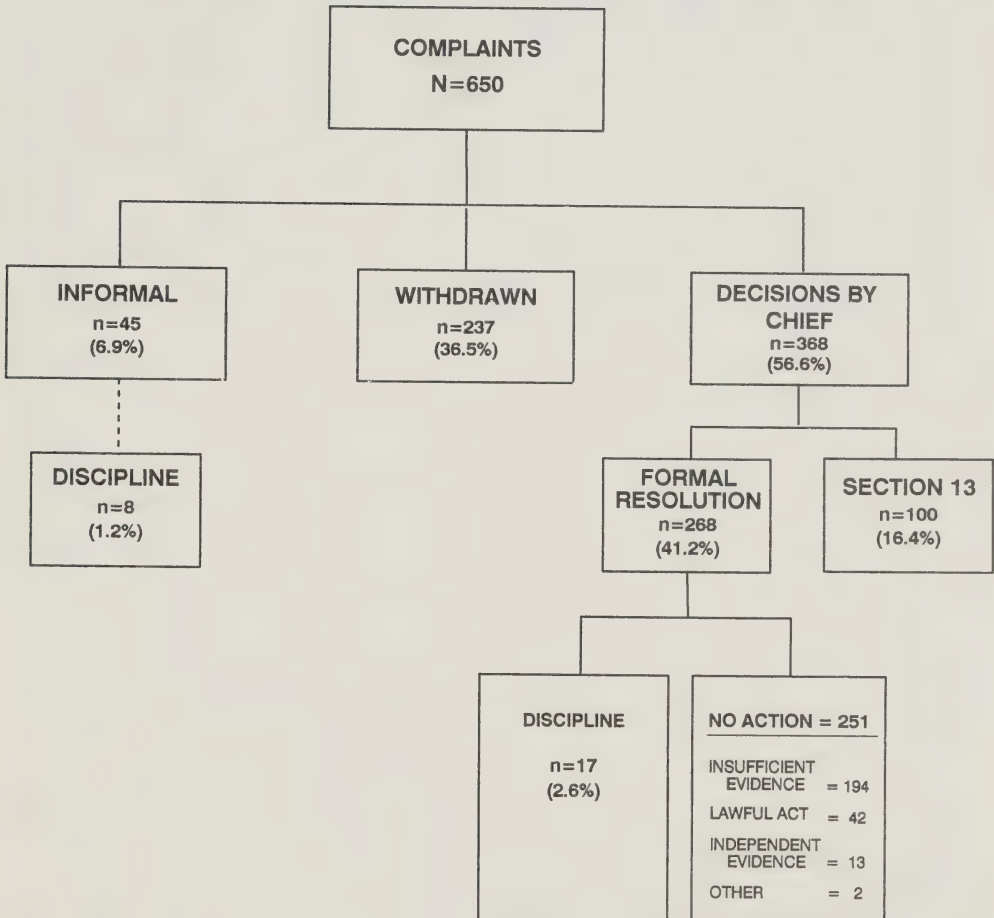
INFORMAL RESOLUTIONS - 45

DECISIONS BY CHIEF - 368

(See Figure 4).

An analysis was made comparing the type of allegation with the nature of the complaint resolution (Table 14). The major difference found was that the complaints which were resolved informally were less likely to involve an allegation of assault. There were no other noteworthy differences.

FIGURE 4
INITIAL DISPOSITION OF COMPLAINTS



Note: The percentages are relative to the
TOTAL number of complaints

Table 14

COMPLAINT RESOLUTION BY TYPE OF ALLEGATION

ALLEGATION	INFORMAL		WITHDRAWN		FORMAL		SECTION 13		TOTAL	
	n	%	n	%	n	%	n	%	n	%
Assault/ Excessive force	9	12.0	137	31.2	118	20.7	47	27.6	311	24.8
Threat, Verbal Abuse	31	41.3	119	27.1	205	36.0	48	28.2	403	32.1
Failure to act according to police procedure	35	46.7	159	36.2	226	39.6	66	38.8	486	38.8
Other Misuse of Authority	0	0.0	24	5.5	21	3.7	9	5.3	54	4.3
TOTAL NUMBER OF ALLEGATIONS	75	100.0	439	100.0	570	100.0	170	99.9	1254	100.0
AVERAGE ALLEGATIONS PER COMPLAINT	1.7		1.9		2.1		1.7		1.9	

7. Reviews by the Public Complaints Commissioner

If the complainant is dissatisfied with the decision of the Chief of Police, including a decision that the complaint is frivolous or not within the jurisdiction of the Act, he or she has a right to request a review by the Public Complaints Commissioner. The Commissioner, however, had no jurisdiction under Metropolitan Toronto Police Force Complaints Act, 1984 to initiate a review. Under the Police Services Act, 1990 the Commissioner has been given the power to initiate a review even if the complainant has not requested a review.

In 1990, 72 reviews requested by complainants were completed. In 45 cases in which a review was completed, the Commissioner agreed to take no further action. In 4 cases, the Commissioner decided that it was not in the public interest to order a hearing into the complaint. In 16 cases, the person who had requested a review withdrew the complaint before the review was completed. In 3 cases, the Commissioner arranged an informal resolution of the complaint. Two cases resulted in Boards of Inquiry being completed. In 2 closed cases, formal recommendations were made. In addition, one case which is still open (a board of inquiry having been called but not completed) gave rise to recommendations in 1990. In all, 14 Boards of Inquiry were called in 1990 and one officer appealed a Police Act decision. (A section on Boards of Inquiry appears as Part V of this Report).

8. Length of Time Taken to Resolve Complaints

A record was kept of the time it took to resolve each complaint.

The number of days between the time the complaint was filed and a decision by the Chief of Police averaged 284.

The number of days between a request for review by the complainant and a decision by the Public Complaints Commissioner averaged 191. Table 15 sets out these figures.

TABLE 15

<u>Number of Days From Review Request to P.C.C. Decision</u>	<u>Number</u>	<u>Percent</u>
1 - 30 Days	4	5.6
31 - 60 Days	8	11.1
61 - 90 Days	11	15.3
91 - 120 Days	7	9.7
121 - 150 Days	8	11.1
151 - 180 Days	4	5.6
181 - 270 Days	10	13.9
271 - 360 Days	11	15.3
Over 360 Days	<u>9</u>	<u>12.4</u>
TOTAL	72	100.00

9. Complaints filed at the Office of the Public
Complaints Commissioner, and requests for
review by the Commissioner

Data has been collected on the operations of the Office of the Public Complaints Commissioner since 1982. There are two major points of contact with the public. The first is upon receipt of the original complaint. The second is the review of the police decision.

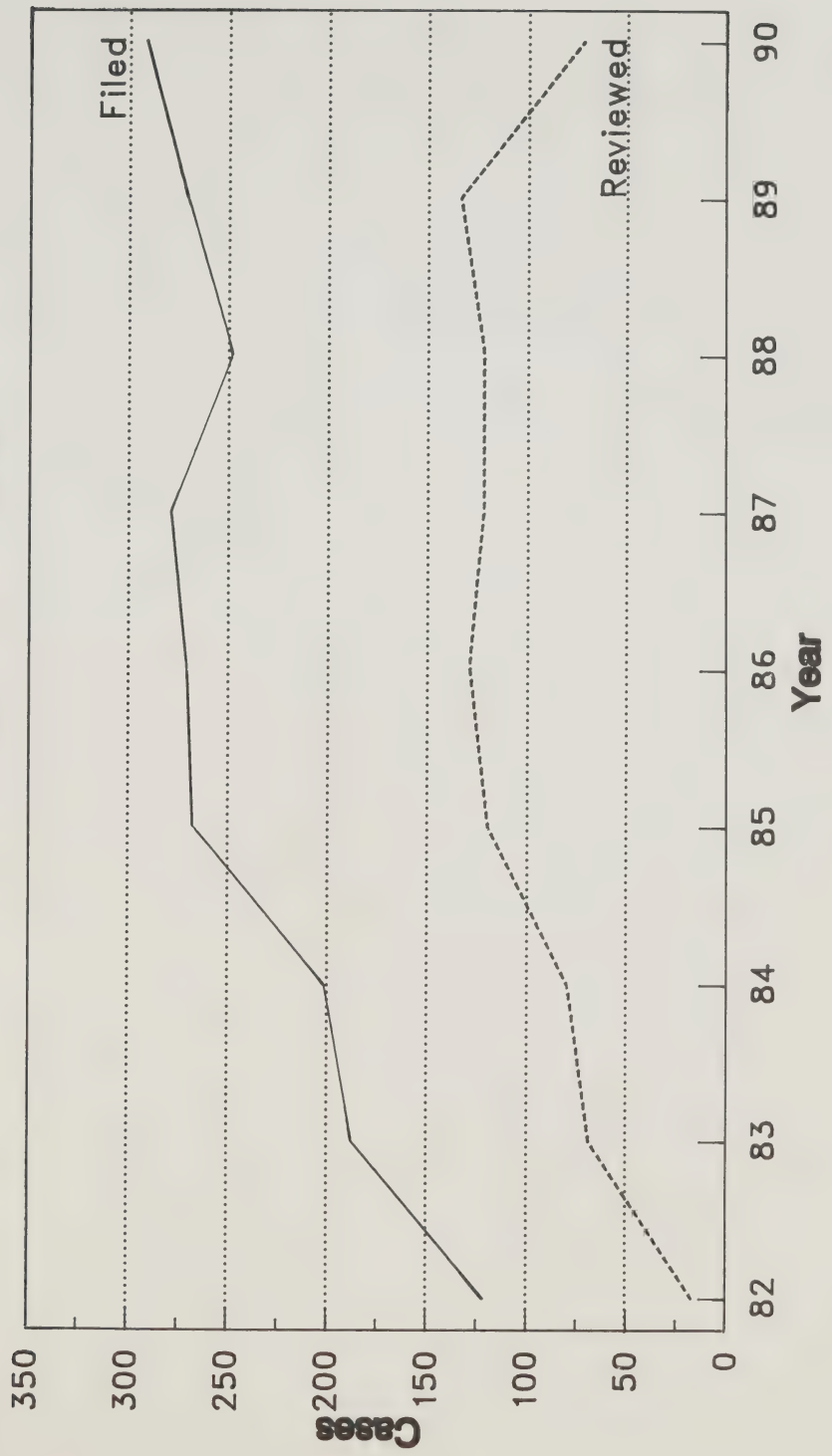
Of the total number of complaints filed, the number of complaints filed at the Office of the Public Complaints Commissioner has risen from 122 in 1982 to 292 in 1990.

Requests for reviews have increased from 17 in 1982 to 90 in 1990.

These increases are presented graphically in Figure 5.

As is apparent from the above figures, public demand for the services of the Office of the Public Complaints Commissioner has increased substantially since its inception.

Figure 5
Workload Indicators
Public Complaints Commissioner



PART III
Other Significant Activities

PART III - OTHER SIGNIFICANT ACTIVITIES

A. EDUCATION AND OUTREACH - POLICE AND PUBLIC

In 1990, as in previous years, the Public Complaints Commissioner's staff appeared at police colleges for training sessions on the complaints legislation and its implications. These education sessions allowed for informal dialogue with members of the police forces.

Public education activities and consultations with the public also continued through the year. Speaking engagements were undertaken at law school and high school classes, and the Commissioner has discussed the system in media interviews. The Office continued to make special efforts to provide information to minority communities, and particularly youth in those communities. Staff of the Commissioner's office have attended regular meetings of Jane/Finch Concerned Citizens, an inner-city organization oriented to youth and their parents. Staff have also attended meetings of the Toronto Aboriginal Social Service Association, Council Fire, and the Native Women's Resource Centre, in addition to speaking at a conference in Thunder Bay sponsored by The Ontario Native Council on Justice, and participating in a police-race relations workshop at Regent Park Community Centre.

Investigative and legal staff of the Office of the Public Complaints Commissioner have also attended at the Don Jail to address inmates. Visits have been made to meet members of the "RAP" Group, a group run by two lawyers and attended by approximately twenty inmates of the Don Jail at any given time.

B. PARTICIPATION IN POLICE/COMMUNITY DIALOGUE

Part of the mandate of the Office of the Public Complaints Commissioner is to try to prevent or avoid the escalation of situations of misunderstandings or hostility between the police and the community. In furtherance of this objective, the Public Complaints Commissioner's staff are involved with a variety of groups created to deal with issues currently confronting the Metropolitan Toronto Police Force and the communities of Toronto and surrounding areas.

1. Council on Race Relations and Policing

The Council on Race Relations and Policing is a partnership between the Metropolitan Toronto Police Force and representatives of government institutions, community agencies and individuals with an interest in issues pertaining to race relations and policing. The organization was originally established in 1976 and its mandate includes bringing the above-noted groups and individuals together to discuss issues of mutual concern. It also aims to provide advisory assistance to other committees on race relations and policing by developing programs and strategies for joint

problem-solving with the police force, developing public education programs and documenting and analyzing trends and experiences in the police/race relations field. The Office of the Public Complaints Commissioner has been represented on the Council since 1982, and staff have been participants in the work of various sub-committees.

Projects undertaken by the Council included:

- A submission to the Metropolitan Toronto Board of Commissioners of Police on employment equity for racial minorities within the Metropolitan Toronto Police Force
- A submission to the Standing Committee on the Administration of Justice of the Ontario Legislature concerning the Police Services Act, 1990
- A two-day workshop on wife assault and sexual assault
- Workshops for youth at the Vietnamese Association of Toronto and in the Regent Park neighbourhood
- An international symposium on cross-cultural training for police personnel

2. The Greater Toronto Region Working Group on Policing in Multi-Cultural Multi-Racial Urban Communities

The Greater Toronto Region Working Group (the Working Group) was formed in 1984 to address policing issues arising out the increasing plurality of our society. The Working Group is composed of representatives from the police forces of Hamilton/Wentworth, Durham Region, Halton Region, Metropolitan Toronto, Peel Region and York Region, as well

as the Ontario Provincial Police, the Royal Canadian Mounted Police, representatives of various committees and levels of government and individuals with expertise in the areas of race and ethnic relations and cross-cultural communication. The Office of the Public Complaints Commissioner has been represented on the Working Group since its inception, and office staff at present serve on the Steering Committee and are active on sub-committees.

Having produced reports containing detailed plans of action on the subjects of achieving employment equity in police recruitment and hiring, cross-cultural training for police officers, and police-community liaison activities, the Working Group, this year, reviewed the question of whether it should disband. Since the Working Group appears to be unique both in its composition (senior police officers representing a range of police forces, broad community representation) and in the nature of its output, which is widely regarded as well considered, the group decided to embark upon more projects. The topic identified for the 1990/91 project is crisis management and conflict mediation in multiracial, multicultural contexts.

3. Toronto Mayor's Committee on Community and Race Relations
Sub-Committee on Policing

The Toronto Mayor's Committee on Community and Race Relations was established in 1981 by the Council of the City

of Toronto to promote understanding and respect among racial cultural, ethnic and religious groups in Toronto. In August, 1988, the Committee revived its policy sub-committee which meets regularly and reports to the entire Mayor's Committee on a monthly basis.

Projects undertaken in 1990 included a brief to the Standing Committee on the Administration of Justice on the proposed Police Services Act, 1990, and a meeting with the Solicitor General which included a discussion of employment equity issues and the implementation of the recommendations of the Task Force on Race Relations and Policing, which had been chaired by the Public Complaints Commissioner.

4. Metropolitan Board of Commissioners of Police: South Asian Committee

Early in 1990, a representative of the Commissioner's Office was invited to attend one of the regular meetings between members of the Southeast Asian community and the Metropolitan Toronto Board of Commissioners of Police. The interchange proved fruitful, and the Commissioner has maintained staff attendance at that meeting on a regular basis. As well as the complaint system, the Committee covered such topics as community-based policing, outreach recruiting, race relations training and employment equity.

C. INTERGOVERNMENTAL INFORMATION SHARING AND INITIATIVES

1. Intergovernmental Race Relations Network

The Intergovernmental Race Relations Network, established in June 1988, is a committee of race relations professionals within the provincial, federal and municipal governments, who meet regularly to share information and to develop strategies to address emerging race relations issues. The object is for government organizations to avoid duplication of effort and to enhance performance by sharing of information and experience, and by cooperating in problem solving and in the detection of potential problems.

In 1990, this group focused on crisis intervention strategies.

2. Attorney General's Race Relations Committee

In 1989, the Attorney General's Race Relations Committee commissioned consultants to review the Ministry's services in order to determine if policies and operations meet the needs of a multi-racial, multi-cultural public. In 1990, the Committee extended its review of policies and practices to the Ministry's agencies, boards and commissions. It also commenced implementation of the consultants' recommendations, which included striking a training sub-committee.

D. ATTENDANCE BEFORE THE LEGISLATURE'S STANDING COMMITTEE ON
THE ADMINISTRATION OF JUSTICE

The Commissioner was invited to appear before the Ontario Legislature's Standing Committee on the Administration of Justice to address both the substance of the new Police Services Act, 1990 (Bill 107) and the 1989 recommendations of the Task Force on Race Relations and Policing.

In response to questions from the Committee, the Commissioner confirmed that not all of the recommendations of the Task Force had been implemented. He noted, however, that some of the major recommendations would be addressed in the provisions of Bill 107, some were expected to be effected through regulations under The Police Services Act, 1990, and others had been addressed through other government initiatives.

The Committee discussed the need for a general change in policing as it affects visible minority communities. The Commissioner confirmed that the Task Force, while not uncovering gross racism in policing, had found that visible minority communities have been viewed differently from the majority population by police, and that the acknowledgement of this problem is vital to the process of improving relations between visible minority communities and the police.

E. THE INTERNATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT (IACOLE)

The International Association for Civilian Oversight of Law Enforcement, of which the Public Complaints Commissioner was President from 1987 to 1989, was established in 1985. It provides an international forum for those who work directly with civilian oversight of law enforcement, or who are interested in the subject. The intent of the Association is to encourage and strengthen government agencies charged with the responsibility of examining and commenting upon citizen complaints of police misconduct. IACOLE holds international conferences as an arena for discussion and debate. These conferences have been attended by members of civilian oversight agencies, police executives, elected government representatives, police association officials, government administrators, civil rights/civil liberties advocates, lawyers and criminal justice educators from around the world.

Membership in the Association is divided into two categories: members and associate members. Members are defined as "persons who are not sworn law enforcement officers and who work for or constitute agencies which are established by legislative authority to investigate and/or review complaints against law enforcement." Members are eligible to vote at Association meetings and to serve as officers. Associate members are defined as "persons interested in the oversight of law enforcement." Associate

members are permitted to participate in all Association activities except voting or serving as officers.

The Public Complaints Commissioner currently serves on the Board of Directors of IACOLE as Past President.

During 1990, at the annual mid-year executive meeting of the Board of IACOLE, held in Ottawa, members of the Calgary Police Commission attended and sought consultation regarding the review of their police complaints system. The Police Complaints Commissioner was subsequently invited to Calgary to consult in detail, and did so.

In September 1990, the Commissioner attended the Sixth Annual Conference of IACOLE in Washington, D.C. The conference was attended by representatives from Canada, the United States, Mexico, Australia, Ireland, England, Hong Kong, France, New Zealand, India and the Philippines. The theme of the Conference was "International Perspectives on the Review of Police Conduct: Setting an Agenda for the 90's". Discussion focused on comparative review of oversight models, resolution of complaints by conciliation, crisis management and measuring the effectiveness of civilian oversight.

PART IV

**Recommendations to the
Metropolitan Toronto
Board of Commissioners of Police**

Part IV RECOMMENDATIONS TO THE METROPOLITAN TORONTO BOARD OF COMMISSIONERS OF POLICE

The Metropolitan Toronto Police Force Complaints Act, 1984, gives the Commissioner the power to make formal recommendations aimed at preventing situations which have given rise to complaints. Section 21 of the Act provides that the Commissioner may make recommendations to the Metropolitan Toronto Board of Commissioners of Police when the Commissioner is of the opinion that a police practice or procedure, or a law affecting the resolution or prevention of complaints, should be altered or implemented. The recommendation power has proved to be a very useful tool in effecting change, even in situations in which it may be inappropriate to call a Board of Inquiry into specific allegations, but in which it would be equally inappropriate not to act at all. Recommendations also can be made when a Board of Inquiry has been called.

The Commissioner made twenty-five recommendations in 1990, twenty-three of which arose from the Economic Summit Conference held in Toronto in June 1988.

Re: Sexual Assault Medical Test Kits

That the Board of Commissioners of Police request the Chief of Police to issue a standing order advising all members of the force that in all cases in which police officers request that the Centre for Forensic Sciences destroy the contents

of a sexual assault kit prior to its being examined, the police must give the interested parties, including the alleged victim of the sexual assault, thirty days notice of their intention to do so in advance of said destruction, and if objection to the said destruction is made, ensure the preservation of the said sexual assault kit until the objecting party advises that it is no longer required.

This recommendation resulted from a complaint by a person who had called the police because of an alleged sexual assault. The complaint concerned discourtesy on the part the officers. Shortly after the investigation, the officers charged the complainant with public mischief, alleging that the complaint of sexual assault was false. Given the Commissioner's concern as to the implications of charges of public mischief against complainants in these circumstances, the investigator requested the results of the sexual assault examination kit from the Centre for Forensic Sciences. The investigator was informed that no report had been completed, since the officers had not requested an examination of the body fluid samples that had been taken. Since there was no request for examination, the samples had been destroyed.

The investigator monitored the trial, at which the complainant was convicted of public mischief. The Commissioner was of the view that, on the evidence, he could not conclude that it would be in the public interest to appoint a Board of Inquiry. However, he was concerned about problems raised in preparing a

defence against charges of public mischief when contents of sexual assault kits were disposed of prior to testing. Such testing might provide positive evidence for the defence. Destruction of the kit might result in an argument, under the Charter of Rights and Freedoms, that the accused had not been provided an opportunity to make full answer and defense to the criminal charge.

Police Response

The Board of Commissioners of Police concurred in the recommendation to the extent that a new Administrative Procedure, that provides that written consent be obtained from the Crown Attorney prior to the disposal of any property seized for expert examination, was put into place.

While this response is positive, the Commissioner is considering requesting a further refinement of the Board's decision.

Re: Court Attendance

- 1) That, save and except those circumstances regulated by administrative procedure 2(c)(4) (Court attendance when sick or injured on duty) or 2(c)(12) (Court attendance while on annual leave), when an officer wishes to be relieved of the duty to attend at court, a written request shall be made by that officer to the unit commander setting out the request and the reasons the officer feels he or she cannot attend court.

- 2) That except in situations in which the decision to excuse an officer from attendance at court is made in consultation with a crown attorney or provincial prosecutor, the unit commander shall relieve a subordinate officer from attendance only in exceptional circumstances.

- 3) That the unit commander submit a separate written report to the appropriate superintendent or staff superintendent when a subordinate officer is relieved from attending court, setting out the specific reasons for which that officer has been relieved from court duty. Such a provision would permit managerial monitoring.

A number of complaints have been lodged by members of the public who have been charged with offences, particularly highway traffic offences, who attended at court to discover that the charges are withdrawn as a result of the police officer not making a court appearance. While many people in such circumstances are quite relieved that the officer has failed to appear, the administration of justice is not particularly well-served in these situations, nor is the reputation of the police force enhanced. Furthermore, some individuals who find themselves in this position have made special arrangements to attend court or have incurred the expense of obtaining legal advice or retaining counsel. Such an individual has, at the very least, been inconvenienced by the fact that the police officer who laid the charge has not followed up by attending the court proceeding. Further, in some cases, the trial could provide the

individual with information which may have an impact outside the realm of the particular criminal or traffic court case. In these circumstances, the fact that a police officer has not attended court might have significant negative consequences for individuals involved. In the light of the above, the Commissioner recommended that an officer be excused from court attendance only in exceptional circumstances.

Police Response:

The Board of Commissioners of Police rejected the recommendation. The Board indicated that, for the most part, the Commissioner's recommendations are already properly addressed by the Regulations and Administrative Procedures of the Force.

Re: Mass Arrest Situations

The remaining recommendations for the 1990 year came about in response to complaint files concerning the manner in which the Metropolitan Toronto Police Force handled arrests made during demonstrations by church groups and social activist organizations in relation to the Economic Summit Conference held in Toronto in June of 1988. These recommendations focused on assisting police to better prepare for and handle the volume of arrests in such situations.

The following is the Recommendation Report, reproduced in its entirety:

* * * * *

From June 19th to 21st, 1988, Toronto hosted the Economic Summit Conference, during which a number of demonstrations took place. Several public complaints arising from demonstration arrests were reviewed by the Public Complaints Commissioner pursuant to the provisions of Section 19 of the Metropolitan Toronto Police Force Complaints Act, 1984.

Some general observations about the events surrounding the Economic Summit demonstrations can be made. Clearly, the variety of activities connected with the Conference posed an extremely difficult challenge for the Metropolitan Toronto Police Force, which spearheaded a multi-force security effort. Extensive police planning took place in anticipation of security needs, and in anticipation of the possible arrest and processing of large numbers of demonstrators. Most of the Force's efforts in preparing for the demonstrations are to be commended. However, while the complexity of organizing and conducting security operations during large demonstrations is not to be understated, police continue to have certain critical responsibilities. Police play a fundamentally significant role in the proper administration of citizens' constitutionally protected rights.

In addition, if police arrest demonstrators, they must do so with the least possible amount of force. The sixth principle of policing as set out by Sir Robert Peel is brought to mind:

"To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public cooperation to an extent necessary to secure observance of law or to restore order; and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective."

Complaints arising from the Economic Summit demonstrations included such allegations as incivility, the denial of right to counsel and the unnecessary use of force. It should be emphasized that as a result of suggestions by the Public Complaints Commissioner and from the media, made immediately following the June 19, 1988 demonstration, steps were quickly taken by police management the following day to address some of the problems which arose.

Further efforts on behalf of the police following the Conference with respect to the right to demonstrate are also noted and commended. During his comments at the November 15, 1989 gathering to reaffirm Standing Order 24, "Declaration of Concern and Intent" the current Chief of Police specifically articulated his commitment to citizens' right to demonstrate. This position had been clearly stated in the June, 1989 Metropolitan Toronto Police Operational Procedure #60, "Protests and Demonstrations", which sets out that:

"Officers are reminded that people have the legal right to demonstrate peacefully... Therefore, the role of the police... must be one of complete neutrality and action should not be taken until the situation has been carefully assessed."

This Operational Procedure also stressed the importance of avoiding an undue show of force.

The following is background information regarding complaints reviewed by the Public Complaints Commissioner, followed by a series of Recommendations made pursuant to section 21 of the Metropolitan Toronto Police Force Complaints Act, 1984. These Recommendations arise primarily from the information and materials collected in the investigation of the Economic Summit Conference complaints. While these Recommendations focus on mass arrest situations, some will apply to normal police procedures and training and are not limited to the mass arrest situation.

It is felt that while Operational Procedure No. 60 provides basic principles and procedures for mass arrest situations, it might be significantly expanded upon to include matters addressed in the Recommendations set out herein.

BACKGROUND INFORMATION

During the 1988 Economic Summit Conference in Toronto, delegates from seven participating nations attracted media attention world wide.

Another conference known as the Popular or Citizen's Summit was held in Toronto at the same time. This conference was the result of an alliance of church groups and social activist organizations which wished to focus attention on issues such as the environment, poverty and human rights.

One of the events planned by the Popular Summit was a rally on June 19th to be held at Queen's Park, followed by a march down University Avenue to the Metro Convention Centre, the site of the Economic Summit Conference. There it was intended that some of the demonstrators would attempt to present citizens' "Arrest Warrants" to heads of state accused of "crimes against humanity".

Several months before the conference, a committee representing the Popular Summit applied to Metropolitan Toronto Police for a permit for the rally and march, and meetings were held to discuss the proposed route. The committee wanted the march to take place as close to the Summit site as possible. The police were concerned about security and whether they had sufficient personnel to handle an anticipated crowd of 15,000. When no agreement was reached, the committee decided to proceed without a permit.

Anticipating that the march might result in arrests, the committee contacted Mr. Clayton Ruby to arrange counsel for any arrested demonstrators. Two teams of lawyers were established, one to attend the rally, the other on standby. Their services would be provided without fee. Mr. Ruby's office was open for

phone calls and his number was announced at the rally. Mr. Ruby phoned the police the evening before the march to inform them of the arrangement but his call was never returned.

Following the rally, an estimated crowd of 1,500 to 2,000 people began the march down University Avenue. They were stopped at Dundas Street by police barricades, including buses and police vans parked across the intersection.

Those demonstrators with "Arrest Warrants" planned to approach the barricades, eight at a time, to ask the police to serve the warrants. If that failed, they would climb over the barricades and attempt to serve the warrants themselves, with the expectation of being arrested. There was to be no resistance, although some demonstrators planned to go limp as a form of protest.

At first there was a standoff at the barricades. In their first public appearance, officers with the Public Order Unit lined up on one side, demonstrators on the other. Gradually, individual demonstrators climbed the barricades and were taken into custody.

Some demonstrators engaged in a "sit-in" in the intersection. An unknown person set a fire in a newspaper box. There were several small explosions which police say were caused by aerosol spray cans thrown into the fire. One individual was

seen jabbing at officers with a stick. These events, and the fact that traffic had been blocked for several hours, prompted then Deputy Chief McCormack to direct the Public Order Unit to clear the intersection. The crowd was ordered to disperse. Those who remained on the street were arrested by the Public Order Unit officers.

Generally, a demonstrator who crossed the barricades, or remained on the street after the order to disperse, was to be taken into custody by officers with the Public Order Unit, then transferred to uniformed officers behind the lines to commence processing procedures.

Following their arrest, demonstrators were put on buses supplied by the Ministry of Correctional Services to supplement regular police vans. When full, the vehicle was driven to 51 or 55 Division, or Old City Hall where temporary facilities were set up for this occasion. Demonstrators were booked individually and booking procedures videotaped. They were then placed in cells until their release.

It should be noted that in anticipation of having to process and detain large numbers of persons arrested at the Economic Summit Conference demonstrations, senior members of the Metropolitan Toronto Police Force produced an internal plan, entitled "The Economic Summit Conference: Processing, Detention and Release of Persons Arrested", hereinafter called the "Summit Plan". The Summit Plan provided that anyone arrested during

Summit demonstrations was to be restrained with plastic handcuffs, which were later to be removed by booking officers.

According to police records, 144 people were arrested on June 19th, 134 for Breach of the Peace. Those arrested for Breach of the Peace were eventually released without charges. Three people were arrested at the demonstration and charged with criminal offenses. Seven other people were arrested for Summit-related matters, but not at the demonstration. All men arrested were taken to 51 Division, the overflow to Old City Hall; women were taken to 55 Division.

Following the Summit Conference, there were 13 complaints of police misconduct regarding the events of June 19th. Three more complaints were filed after a similar, though smaller demonstration on June 21st. On July 4th, some of the same demonstrators staged a protest in front of the U.S. Consulate. The same day there was a further confrontation between police and a group claiming to be Anarchists. Seven more complaints were filed. An additional two complaints for Summit-related matters were filed by citizens who had nothing to do with the demonstrations. Of the 25 complaints, seven were reviewed by the Public Complaints Commissioner.

Generally the Summit complaints fell into the following categories:

EXCESSIVE USE OF FORCE

Complainants allege there is no need for the police to use force during a peaceful demonstration. Many demonstrators suggested that the strong police presence seen on June 19th could have provoked a violent confrontation when none was intended. They were specifically concerned about the tactics of the Public Order Unit.

There were complaints that some officers were overly zealous with demonstrators whom they recognized from previous demonstrations or with those who went limp on arrest. Officers allegedly tried to force demonstrators to walk on their own by bending their wrists, by gripping their arms so tightly they were bruised and by applying other pressure point techniques to vulnerable spots behind the ears or on the neck. Demonstrators also complained of officers yanking their arms up behind their backs to apply restraints.

USE OF PLASTIC WRIST RESTRAINTS

Many demonstrators suggest that restraints of any kind are unnecessary with peaceful demonstrators. There were specific complaints about plastic wrist restraints applied too tightly or left on for long periods of time as the demonstrators waited to be processed.

RIGHT TO COUNSEL

There were complaints about the inconsistency with which complainants were informed of the right to counsel and complaints of denial of access to counsel.

Mr. Ruby and his associates allege that they went to the stations to be available to the demonstrators but they were deliberately misled by police officers who interfered with their efforts to provide counsel.

POLICE ATTITUDE

The demonstrators felt that the kinds of tactics used by police on June 19th were inappropriate to the type of citizen involved in the demonstration. Many demonstrators were members of church groups or organizations committed to social reform and to the right to peaceful demonstration. They say there would have been no confrontation on June 19th had they been permitted a legal march, and suggest that the confrontation only occurred because the police viewed them unfairly as a lunatic fringe or a threat to security.

IDENTIFICATION OF OFFICERS

There were reports that Public Order Unit officers were not properly identified. The identification of arresting officers was also a problem when the officer who initiated the arrest, usually an officer with the Public Order Unit, was not identified on the Mass Arrest Card or any other police record. In at least one instance, this failure to identify the arresting officer resulted in a uniformed officer being improperly identified as the subject of a complaint.

RECOMMENDATIONS

1. USE OF FORCE

Complaints arising from the Economic Summit demonstrations included allegations that unnecessary force was used upon protesters arrested by police. In particular, arresting officers employed the use of "pressure point" holds, also known as "come-along" holds or "pain-compliance" techniques on non-violent protesters who would not voluntarily walk when required to do so but remained "limp" and would have to be carried.

The use of pain compliance techniques by police has been the subject of criticism in the United States. Legislation has passed by which funds are withheld from any municipality that

fails to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies against individuals engaged in nonviolent civil rights demonstrations. This legislation, in part, was put forth as a result of demonstrators complaining about the use of pressure point holds.

It is our opinion that when a demonstrator is nonviolent, that individual ought to be treated as such. The use of unnecessary force upon a peaceful demonstrator is inappropriate.

1. It is recommended that police management ensure, through appropriate training and force administrative procedures and guidelines, that arresting officers understand:
 - (a) police personnel should use the least restrictive and the least forceful method of arrest that is consistent with their security needs in any given situation, including the mass arrest situation; and
 - (b) the use of force, in particular the use of pressure point holds, in circumstances in which protesters are nonviolent, is not acceptable behaviour and may be unlawful.
2. It is recommended that the police force review alternative, less forceful and potentially dangerous methods of dealing with a "limp", nonviolent protester.
2. USE OF HANDCUFFS

At present, Metropolitan Toronto Police Force Regulation 4.8.2. sets out that the use of handcuffs is discretionary in circumstances in which, for example, handcuffs may be necessary to prevent the escape of a prisoner in custody. That the use of handcuffs is a matter of discretion on the part of the arresting officer is clearly demonstrated by use of the words "handcuffs

may be used...". The Regulations also indicate that women and juveniles should not normally be handcuffed.

The Summit Plan procedure, which dictated the use of plastic handcuffs, overruled the usual discretion afforded to officers. It appears that the Economic Summit demonstrations were prejudged as a sufficiently serious situation to warrant the removal of discretion on the part of not only arresting and transport officers, but, in addition, supervisory officers. It is our respectful opinion that a blanket order automatically to handcuff all prisoners during a particular demonstration, regardless of the actual circumstances confronted, is neither reasonable nor justified.

3. It is recommended that the police should not limit the use of discretion on the part of supervisory, arresting and transport officers as to whether or not handcuffs are necessary in any particular situation. The conduct of an individual should, in each instance, be the determining factor.

Plastic Handcuffs

It is our understanding that the use of plastic handcuffs by police is common in mass arrest situations as they possess many features which make them convenient.

Despite their convenience, our investigation has caused us some concern with respect to their safety and comfort. We have received a number of reports from demonstrators that the plastic

handcuffs caused problems such as extreme discomfort, particularly in excessively hot temperatures. In addition, because of the nature of the plastic handcuffs, police officers did not have the ability to readjust them if they were applied improperly, nor did all police officers or transport personnel have the ability to remove them, in cases of medical or other emergencies, if they were not carrying cutter removers.

4. It is recommended that in situations in which plastic handcuffs are used, removal cutters should be readily accessible to all police personnel, including transport personnel.

3. TRANSPORTATION OF PRISONERS

It is evident from the information collected by way of the complaints that a number of arrested persons were left handcuffed for long periods in transportation vehicles, in extremely hot temperatures, awaiting transfer from the scene of the demonstration to the police station. We have received reports that female prisoners waited in transportation vehicles for up to two hours before they were transferred from 51 Division to 55 Division. Not only can these long delays cause physical discomfort, prisoners are also effectively denied an opportunity of exercising their constitutional rights during the delay.

5. It is recommended that police management ensure that adequate transport facilities and vehicles be available to avoid unreasonable delays in processing prisoners.

6. It is recommended that the Multiple Arrest Incident Card, as referred to in Recommendation 9, be amended to contain a section which will indicate the time a prisoner was placed in a transport vehicle.

4. RIGHT TO COUNSEL

- (a) General Comments

Complaints with respect to the issue of the right to counsel included the inconsistency with which prisoners were informed of their rights and the denial of requests to see counsel.

Despite the difficulties involved in arresting and processing large numbers of demonstrators, the police force and its individual officers play an important role in ensuring that citizens' constitutional right to retain and instruct counsel is properly protected and administered. It is important that officers be informed of and understand that role and its underpinnings.

7. It is recommended that the following principles be set out at the beginning of any Administrative Procedure dealing with the duties of police officers whose responsibilities involve citizens' constitutionally protected rights:
 - On arrest or detention, every person has a right to retain and instruct counsel without delay and must be informed of that right;
 - The right to counsel arises upon arrest or detention;
 - It is irrelevant if the person under arrest is, or is not, formally charged with an offence;

- The police must ensure the person arrested clearly understands the right to counsel;
- When an individual has expressed a desire to exercise the right to counsel, that person must obtain advice on how to exercise that right;
- Prisoners are entitled by law to exercise the right to counsel in private;
- Administrative or investigative convenience cannot serve as justification for ignoring or delaying constitutional rights, in particular the right to counsel.

8. It is recommended that the above mentioned principles be set out in a further Routine Order to be released immediately to all members of the Metropolitan Toronto Police Force.

(b) At the Scene of the Arrests

Multiple Arrest Incident Cards were used during demonstration arrests. It was anticipated that these cards would contain sufficient information to enable the booking officer to process arrested persons, thereby avoiding the necessity of the arresting officer leaving the scene to accompany a prisoner to the police station. However, there was no procedure in place for an arresting officer to record whether or not a prisoner had been advised of the reasons for arrest and his or her right to counsel. Nor was there a procedure in place to record a prisoner's request to exercise the right to counsel and subsequently bring that information to the attention of the booking officer.

9. It is recommended that the Multiple Arrest Incident Card be amended to contain the following additional sections:

- (i) Prisoner advised of the reason for the arrest (space for the officer to initial),
 - (ii) Prisoner advised of the right to counsel (space for the officer to initial), and,
 - (iii) Prisoner requested the right to counsel (to be completed if the prisoner requests counsel; space for officer to initial).
10. It is recommended that if any police officer comes into direct contact with a prisoner before the booking process and is advised by the prisoner that he or she wishes to exercise the right to counsel, that police officer must, if possible in the circumstances, indicate this request on the Multiple Arrest Incident Card. If it is not possible to make such a notation immediately, that officer ought to make efforts at the earliest possible opportunity to ensure that the prisoner's request is brought to the attention of appropriate police personnel, such as the booking officer or transport officer.

(c) Booking Process

The Public Complaints Commissioner reviewed a number of complaints with respect to exercising the right to counsel, during the booking stage following the demonstration arrests.

It is our opinion that a large number of problems and subsequent citizen complaints could be avoided at the booking stage of the process by expanding the responsibility of the officer in charge, making that officer directly responsible for ensuring the prisoner's rights are properly protected and administered.

Current Metropolitan Toronto Police Administrative Procedures do not provide that an officer in charge is to discuss with the prisoner, directly, the prisoner's understanding of reasons for arrest or the right to counsel. The officer in charge must simply ensure that the prisoner has been informed of the reasons for arrest and the right to counsel. This requirement could be fulfilled by merely conferring with the arresting officer privately and not with the prisoner directly.

Further, it is our opinion that additional problems have arisen because the officer in charge does not ascertain specifically whether or not a prisoner wishes to exercise the right to counsel. To avoid these problems, that officer should ask if a prisoner wishes to exercise the right.

We recognize that to ask a prisoner whether or not he or she wishes to exercise the right to counsel may not be a specific requirement in law at present. However, the Supreme Court of Canada in R. v. Brydges made a liberal and generous interpretation of section 10(b) of the Canadian Charter of Rights and Freedoms. Police can only benefit by moving in conformity with the direction the Supreme Court of Canada appears to be taking. To its credit, the Force has already moved in this direction with respect to the duties of the arresting officer. The specific information on the

"Right to Counsel" card read by the police to any person being arrested includes a statement which reads, "Do you wish to call a lawyer now?" This practice should be extended to the booking officer.

The following recommended procedure would apply equally to any arrest situation and not be confined to a mass arrest situation.

11. It is recommended that the Record of Arrest Form be amended to contain the following additional information, confirmed directly with the prisoner:
 - (i) the prisoner has been informed of and understands the reason for arrest;
 - (ii) the prisoner has been informed of and understands the right to retain and instruct counsel without delay;
 - (iii) the prisoner has been asked if he or she wishes to exercise the right to counsel; the prisoner's response should be noted;
 - (iv) the prisoner has been advised that, if the right to counsel has not been exercised during the booking process, the prisoner may make a request to exercise the right at any time during detention;
 - (v) a list of any personal property belonging to the prisoner that has been confiscated by the police.

The signature of both the officer in charge and the prisoner is required on the Record of Arrest Form.

We recognize that portions of the Record of Arrest Form repeat information on the Multiple Arrest Incident Card, but feel it is important that each form contain the necessary information. The overlap will be in a mass demonstration situation only.

It should serve to protect both the prisoner and the police force if all information collected, or conveyed by the booking officer to the prisoner, is handed to the prisoner in written form.

12. It is recommended that a separate form, or the appropriate section of the Record of Arrest Form, which sets out the prisoner's rights as stated above and a list of the prisoner's property confiscated by the police, be provided to every prisoner on completion of the booking process.

(d) Exercising the Right to Counsel Following Demonstration Arrests.

Our investigation revealed that prisoners who did not make specific requests to exercise the right to counsel during the arrest or booking stages, but subsequently expressed a desire to see counsel, were not permitted to exercise their rights.

Many demonstrators were aware that organizers were supplying counsel to the demonstration. The demonstrators were not always aware of the name of counsel supplied. They did not feel the necessity during the booking stage or other times to specifically request counsel, as they assumed that counsel provided by the organizers would arrive shortly, at which time they would be given an opportunity to exercise the right without specific request.

Normal police procedure regarding counsel should be modified in order to accommodate the special circumstances of the mass arrest situation.

13. It is recommended that an applicant, on an application form for a parade permit, be asked whether or not special counsel arrangements have or will be made for arrested protesters, and to name such counsel, if possible.
14. Procedures dealing with mass arrest situations should provide that when a lawyer advises that he or she has been retained by demonstration organizers, counsel should be regarded as special duty counsel and immediately be given the names of persons arrested in connection with the demonstration. As well, after the arrival of demonstration counsel, each prisoner must be advised immediately that counsel is present and can speak to them upon request. If a prisoner requests to speak with special counsel, the police should grant that request immediately.

(e) Right to Privacy

Instructing counsel in private, either in person or by telephone, is an essential component of the right to counsel. Privacy need not be specifically requested by counsel or the prisoner. Counsel may speak to prisoners in a group only if counsel and the prisoners consent to the procedure and adequate facilities are available.

15. It is recommended that the Metropolitan Toronto Police Force review its internal facilities to ensure that the demand of the law is met, including the provision of adequate physical facilities, interview rooms, and telephones to accommodate a prisoner's right to counsel in private.

5. POLICE TRAINING

(a) Ongoing Training: Constitutionally Protected Rights

A review of the existing training materials and discussions with police college trainers revealed that current training focuses primarily on procedure. It appears that officers are not provided with a specific educational session on the philosophical basis for constitutionally protected rights.

16. It is recommended that a separate, specific training module be developed focusing on the constitutional rights of the citizen, their rationale, impact on the police and the role of the police in a democratic society. This training would be mandatory for all recruits. As well, a mandatory refresher session should be required for any officer advancing to a position such as an officer in charge or a booking officer with supervisory functions, prior to such an officer assuming these responsibilities.

(b) Pre-Demonstration Training/Preparation

Our investigation revealed that the Summit Plan briefing materials which were circulated to all relevant police personnel included an overview which stated, "Certain groups of demonstrators and protesters are determined to disrupt and embarrass Metropolitan Toronto during this Summit".

Chief McCormack's stated commitment to support the democratic right of citizens to demonstrate suggests that the comments in the overview are inappropriate.

17. It is recommended that Metropolitan Toronto Police management ensure that pre-demonstration briefing materials comply with the Force's commitment to police neutrality and citizens' right to demonstrate.

In light of the very complex and important nature of the rights of an individual on arrest, and the fact that a demonstration may give rise to mass arrests, it is important that police personnel be fully briefed prior to a demonstration.

18. It is recommended that, prior to a demonstration, all police personnel directly involved with any process which raises prisoners' constitutional rights, in particular, arresting and booking officers be fully briefed on the law, police procedures and their responsibilities to ensure consistency throughout the process.

6. GENERAL ISSUES

(a) Information Lists

The Summit demonstrations raised a number of concerns from citizens claiming they experienced difficulty in locating family members whom they believed had been placed under arrest. As well, counsel retained by the demonstration organizers indicated they had difficulty obtaining the names of individuals who were under arrest at the various police facilities.

19. It is recommended that lists of arrested individuals prepared during the booking process be made available to counsel and to prisoners' family members as each prisoner is booked.
20. It is recommended that in a mass arrest situation, a central information facility be created which will maintain an updated list of all persons arrested around the city specifying at what police Division each prisoner has been incarcerated and the status of each individual under arrest, i.e. notation when released.
21. It is recommended that each Division involved in processing persons arrested at a demonstration assign a police officer to act as an information officer. The information officer would be responsible for the updated lists of prisoners being made available to the prisoners' counsel and family members and to coordinate information with the central information facility.

(b) Uniforms

Information was brought to our attention that the identification numbers of individual members of the Public Order Unit were not always clearly visible on their uniforms. It was noted that identification numbers were taped to the shoulders of their uniforms (not on the front) and that their caps were not always worn. When the Public Order Unit stood shoulder-to-shoulder, their identification numbers could not be easily seen. It is our understanding, however, that this matter is currently being considered and the problems will be rectified in the near future.

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PART V

PART V

Boards of Inquiry

PART V - BOARDS OF INQUIRY

A. INTRODUCTION

Either the Public Complaints Commissioner or the Chief of Police can decide to send a complaint to a Board of Inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984. In addition, any police officer who wishes to appeal from an adverse decision of an internal police disciplinary tribunal arising from a public complaint can appeal to a Board of Inquiry under the complaints legislation.

Under the Metropolitan Toronto Police Force Complaints Act, 1984, which governed Boards of Inquiry in 1990, the individuals who form Boards of Inquiry which hear and decide upon complaints are selected from a panel appointed by the Lieutenant Governor in Council. One-third of the members of this panel are recommended for appointment jointly by the Attorney General and the Solicitor General; one-third of the members are recommended for appointment by the Metropolitan Toronto Council; and the remaining one-third are recommended jointly by the Metropolitan Toronto Board of Commissioners of Police and the Metropolitan Toronto Police Association. The Attorney General/Solicitor General appointees must be members of the Law Society of Upper Canada. These lawyers chair each Board hearing. No member of a Board of Inquiry may be a police officer.

A Board of Inquiry in respect of an allegation of serious misconduct is heard by three people, one from each group of appointees. A Board of Inquiry involving an allegation of minor misconduct is heard by one person, an appointee recommended by the Solicitor General and Attorney General. The standard of proof in these proceedings requires that an allegation be proved beyond a reasonable doubt for there to be a finding of misconduct. Hearings are held in public and are procedurally similar to other administrative or quasi-judicial proceedings. The Statutory Powers Procedure Act and the rules of natural justice apply. There are additional provisions in the complaints legislation protecting the rights of police officers.

Between January 1, 1990 and December 31, 1990 a total of fourteen complaints were referred to a Board of Inquiry, thirteen by the Commissioner and one by the Chief of Police. Within the reporting period, nine complaints were given hearing dates in 1990; three of these were among the fourteen complaints referred to a Board in 1990.

Four Boards of Inquiry completed their proceedings and produced decisions during 1990. Two had been called in 1989, and two in 1988.

B. BOARD OF INQUIRY DECISIONS

1. RE: LEVY and SGT. FRISCH and P.C. VANDERHART

DATE: June 29, 1990

CHAIR: Gary Yee

Hearing ordered by Public Complaints Commissioner.

The complainant (David Levy) alleged that P.C. Gregory Vanderhart, at the scene of the arrest, and Sgt. John Frisch, at the police station, used unnecessary violence against him, contrary to section 1(g)(ii) of the Code of Offences under the Police Act.

P.C. Vanderhart admitted striking the complainant in the stomach with a baton, and Sgt. Frisch admitted causing the complainant to lose his balance, whereupon the officer's hand struck the complainant in the eye. The complainant agreed that Sgt. Frisch had apologized to him immediately after the unnecessary violence.

Both officers agreed that the complainant had not provoked them.

Pursuant to a joint submission by defence counsel and counsel for the Attorney General, the Board decided upon a penalty of forfeiture of five days off and a reprimand for P.C. Vanderhart, and a forfeiture of ten days off and a reprimand for Sgt. Frisch.

The Board took into account the exemplary records of both officers; however, they were extremely disturbed by the fact that these assaults were unprovoked. Furthermore, the Board was particularly offended by the fact that the assault by Sgt. Frisch had occurred behind closed doors. The Board felt that Sgt. Frisch's rank and experience should weigh against him as it carries with it the responsibility to set an example for subordinate officers.

2. RE: FISHER and P.C. CARTER

DATE: March 23, 1990

CHAIR: Eleanor A. Cronk

Appeal from Police Act hearing.

P.C. Michael Carter was charged with neglecting to carry out a lawful order contrary to section 1(b) (ii) of the Code of Offences under the Police Act, by failing to fill out an occurrence report.

The officer had been approached by the complainant, who requested that the officer accompany him to make a report concerning the break-in of the complainant's car and subsequent theft of possessions within the car. P.C. Carter refused to attend the scene and to make the report as requested by the complainant.

Pursuant to the hearing ordered under the Police Act, P.C. Carter was found guilty of misconduct and required to

resign within seven days or to be summarily dismissed from the police force.

P.C. Carter appealed this decision of the police tribunal to the civilian Board of Inquiry as provided for in section 16 of the Metropolitan Toronto Police Force Complaints Act, 1984. The officer appealed on two grounds: that there was "a glaring error" in the evidence of the complainant, and that the Superintendent erred in determining that dismissal was the appropriate remedy.

The Board considered the evidence and decided that the Superintendent had correctly assessed the evidence, taking into account the circumstances pertaining to this officer, and had correctly administered the proper penalty. The Board reviewed P.C. Carter's personal file and found numerous misdemeanours. The Board agreed with the finding of dismissal. The appeal was therefore dismissed.

3. RE: RAMSAY and SGT. LANG, P.C. QUINTIERI
and P.C. MORPHET

DATE: February 19, 1990

CHAIR: W. A. Derry Millar

Hearing ordered by Chief of Police.

The commencement of these proceedings was delayed due to a decision by the Chief of Police not to make a final decision with regard to this complaint until a civil suit

launched concurrently by the complainant was decided. The Divisional Court in Re Ramsay and The Chief of Police of Metropolitan Toronto et al. (set out in the 1988 Annual Report) directed the Chief of Police to make his decision on the basis of the final report so that the complaint process could proceed expeditiously, as mandated in the legislation.

It was alleged by the complainant, Dana Ramsay, that Sgt. David Lang, P.C. Michael Morphet and P.C. Victor Quintieri took the complainant, who was at a football game, behind closed doors, and used unnecessary violence against the complainant by punching and kicking him, contrary to s. 1(g) (i) of the Code of Offences under the Police Act.

The Board found misconduct on the part of Sgt. Lang and P.C. Quintieri, and no misconduct against P.C. Morphet. The Board imposed a written reprimand on each officer, in addition to a forfeiture of twelve days off to be worked without pay.

4. RE: ZWIRKO and SGT. BROWN, P.C. LADD,
P.C. GALLIPEAU and P.C. CLIFFORD

DATE: May 8, 1990

CHAIR: E. Irish

Hearing ordered by Public Complaints Commissioner.

The complainant, Stanley Zwirko, alleged that Sgt. Allen

The complainant, Stanley Zwirko, alleged that Sgt. Allen Brown, P.C. John Ladd, P.C. Ronald Clifford and P.C. Edward Gallipeau used unnecessary violence against him by threatening him and punching him in the course of conducting a strip search in a cell area, contrary to section 1(g) (ii) of the Code of Offences under the Police Act.

The Board found that the above-mentioned officers were not guilty of misconduct. They accepted that Mr. Zwirko suffered some injuries as a result of a struggle, but concluded the injuries were caused because the officers had to use necessary force to take him into custody. The Board, however, was satisfied that someone had stood on Mr. Zwirko's chest during the incident, and felt compelled to comment on this incident. They found this conduct disturbing and deplorable because it was totally unnecessary. At the time that an officer was standing on Mr. Zwirko's chest he was in a passive state. There was no sign that Mr. Zwirko was trying to resist at this point, and therefore, it was puzzling as to why an officer saw fit to stand on the complainant's chest. Unfortunately, counsel for the Attorney General was unable to prove which officer it was. The board stated that it hoped that the authorities at the police station would see fit to carry out some sort of internal investigation with regard to this particular incident with the aim of sending a clear message that this type of conduct would not be tolerated.

APPENDICES



Government
of Ontario

Metropolitan Toronto Police Force Complaints Act, 1984

Statutes of Ontario, 1984
Chapter 63

as amended by
1986, Chapter 31

and

Ontario Regulation 494/85

CHAPTER 63

Metropolitan Toronto Police Force Complaints Act, 1984

1. In this Act,

Interpretation

- (a) "Bureau" means the Public Complaints Investigation Bureau;
- (b) "chief of police" means the chief of police of the Metropolitan Police Force;
- (c) "Commissioner" means the Public Complaints Commissioner appointed under this Act;
- (d) "complainant" means a member of the public who makes a complaint in accordance with the provisions of this Act;
- (e) "complaint" means an allegation or allegations, made orally or in writing, by a member of the public, concerning the misconduct of a police officer;
- (f) "inquiry" means an allegation or allegations concerning conduct of a police officer that does not amount to "misconduct";
- (g) "misconduct" means an act or omission on the part of a police officer that constitutes an offence under the Code of Offences set out in the Schedule to Regulation 791 of Revised Regulations of Ontario, 1980, made under the *Police Act*;
- (h) "officer in charge" means the police officer who at any particular time, while on duty, is in charge of and responsible for, the proper functioning of a police facility;
- (i) "police officer" means a police officer on the Metropolitan Police Force;
- (j) "prescribed" means prescribed by the regulations;

R.S.O. 1980,
c. 381

(k) "regulations" means the regulations made under this Act;

(l) "subject officer" means a police officer who is the subject of a complaint. 1984, c. 63, s. 1.

Application
of Act

2. This Act applies to complaints and inquiries made by members of the public respecting the conduct of police officers on the Metropolitan Police Force and hearings under this Act and disciplinary proceedings under the *Police Act* and the regulations thereunder arising out of such complaints. 1984, c. 63, s. 2.

R.S.O. 1980,
c. 381

Appointment
of Public
Complaints
Commissioner

3.—(1) The Lieutenant Governor in Council shall appoint a Public Complaints Commissioner, to hold office for a term not exceeding five years, to exercise the powers and perform the duties assigned to him by this Act and the regulations.

Re-
appointment

(2) The Commissioner may be reappointed for a further term or terms not exceeding, in each instance, five years.

Officers,
etc.

(3) Such officers and employees as are considered necessary from time to time for the purposes of this Act may be appointed under the *Public Service Act*.

R.S.O. 1980,
c. 418

Remuneration

(4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

(5) The Commissioner shall maintain copies of all records, reports and other materials received by him under this Act.

Monitoring
handling of
complaints
and inquiries

(6) The Commissioner shall monitor the handling of complaints and inquiries by the Bureau and the chief of police.

Annual
report

(7) The Commissioner shall report annually on the affairs of his office to the Solicitor General and to the Attorney General and the Attorney General shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the **Assembly** if it is in session or, if not, at the next ensuing session.

Summary of
decisions

(8) The Commissioner shall cause to be prepared and published periodically a summary of the decisions, and the reasons therefor, made by the boards of inquiry under this Act.

Audit

(9) The accounts of the Commissioner shall be audited annually by the Provincial Auditor. 1984, c. 63, s. 3.

4.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry. Panel for boards of inquiry

(2) One-third of the members of the panel shall be persons who are members of the Law Society of Upper Canada who are jointly recommended for appointment by the Attorney General and the Solicitor General. Recommendations for appointment

(3) One-third of the members of the panel shall be persons, other than police officers, the appointment of whom the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police Association have jointly recommended in writing to the Attorney General. 1984, c. 63, s. 4 (1-3). Idem

(3a) If the joint recommendations referred to in subsection (3) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General. Failure to make joint recommendations

(3b) Before making the recommendation referred to in subsection (3a), the Attorney General and the Solicitor General shall consider any recommendations made by the Metropolitan Board of Commissioners of Police alone or the Metropolitan Toronto Police Association alone. 1986, c. 31, s. 1, *part.* Individual recommendations to be considered

(4) One-third of the members of the panel shall be persons recommended by the council of The Municipality of Metropolitan Toronto to the Attorney General for appointment. 1984, c. 63, s. 4 (4). Idem

(4a) If the recommendations referred to in subsection (4) have not been submitted to the Attorney General within the time that the Attorney General has specified under subsection (6), one-third of the members of the panel shall be persons, other than members of the Law Society of Upper Canada, who are jointly recommended for appointment by the Attorney General and the Solicitor General. 1986, c. 31, s. 1, *part.* Failure to make recommendations

(5) Appointments to the panel shall be for a term of two years and a person who is appointed may be reappointed for a further term or terms not exceeding, in each instance, two years. Term

4 Chap. 63 POLICE FORCE COMPLAINTS Sec. 4 (6)

Idem (6) Recommendations made under subsections (3) and (4) shall be submitted to the Attorney General within such time as he may specify.

Members of Police Complaints Board under 1981, c. 43 (7) Notwithstanding subsection 34 (1), the members of the Police Complaints Board, except the chairman, constituted under the *Metropolitan Police Force Complaints Project Act, 1981* shall act as members of boards of inquiry under this Act until such time as the panel referred to in subsection (1) is appointed and members of the Police Complaints Board appointed from the groups set out in subsections 4 (4), (5) and (6), respectively, of the *Metropolitan Police Force Complaints Project Act, 1981* shall be deemed to be recommended under subsections (2), (3) and (4) of this section, respectively.

NOTE: Subsection 34 (1) as mentioned in subsection (7) above repealed the *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43. See—1984, c. 63, s. 34 (1).

Remuneration (8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council. 1984, c. 63, s. 4 (5-8).

Establishment of Bureau 5.—(1) The chief of police shall establish and maintain for the purposes of this Act a branch of the Metropolitan Police Force to be known as the Public Complaints Investigation Bureau.

Staff (2) The chief of police shall ensure that the Bureau is supplied with sufficient staff to effectively receive, record and investigate complaints and inquiries. 1984, c. 63, s. 5.

Where complaints may be made 6.—(1) A member of the public may make a complaint at the Bureau, at any police station in Metropolitan Toronto or at the office of the Commissioner.

Information (2) The person who receives the complaint shall record the complaint in the prescribed form and shall furnish the complainant with a prescribed statement that sets out the procedures that will be followed respecting the complaint and the rights under this Act of the complainant, together with a copy of the complaint.

Preliminary investigation (3) Where a complaint is recorded at a police station, the officer in charge of the station shall take all reasonable steps to ensure that all available evidence is gathered that may be lost if not secured immediately and, if appropriate, ensure that such other preliminary investigation as may be warranted is conducted and that a report concerning such preliminary

investigation is prepared and forwarded to the person in charge of the Bureau.

(4) Where a complaint is recorded at a police station, the person recording the complaint shall forward forthwith to the Bureau and to the Commissioner a copy of the complaint. Copy of complaint

(5) Where a complaint is recorded at the Bureau, the person recording the complaint shall forward forthwith to the Commissioner a copy of the complaint. Idem

(6) Where a complaint is recorded at the office of the Commissioner, the person recording the complaint shall forward forthwith to the Bureau a copy of the complaint. 1984, c. 63, s. 6. Idem

7.—(1) Where a complaint is made by a person not directly affected by the incident, the Commissioner, as soon as practicable after receiving the complaint, shall in writing notify the person directly affected by the incident that a complaint has been made under this Act and advise him that he is entitled to be the complainant. Notification by Commissioner

(2) Where the person directly affected by the incident is not known or can not be found or does not, within thirty days of the date of the notification, file with the Commissioner a written request to be the complainant in the matter, no further action shall be taken under this Act in respect of such complaint. Where no action to be taken

(3) Nothing in subsection (2) shall prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder, and the chief of police shall notify the Commissioner if any such action is taken and the result thereof and either the chief of police or the Commissioner shall then notify the complainant. Action under R.S.O. 1980, c. 381

(4) For the purposes of this section a person who observes an incident shall be deemed to be a person directly affected by the incident. 1984, c. 63, s. 7. Person deemed directly affected

8.—(1) Upon receipt of a complaint, the person in charge of the Bureau may, with the consent of the Commissioner, reclassify any of the separate allegations within the complaint as an inquiry, and the complainant and the subject officer shall be notified forthwith. Reclassification by Bureau chief

(2) The person in charge of the Bureau shall determine whether any investigation is required in respect of an inquiry, Response

6

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and if it is, cause such investigation to be conducted, respond to the complainant in writing within sixty days of receipt of the complaint and forward a copy of the response to the Commissioner forthwith.

Reclassification
during
investigation

(3) The person in charge of the Bureau may, during the course of an investigation under subsection (2), reclassify any of the separate allegations within the inquiry as a complaint, and the complainant, the subject officer and the Commissioner shall be notified forthwith.

Personal
record

(4) No reference shall be made in the personal record of any police officer to an inquiry resolved in accordance with subsection (2). 1984, c. 63, s. 8.

Police officer
to be
informed

9. The person in charge of the Bureau shall inform forthwith the subject officer of the substance of the complaint in the prescribed form, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint. 1984, c. 63, s. 9.

Informal
resolution

10.—(1) The person in charge of the Bureau shall consider whether a complaint can be resolved informally and, with the consent of the complainant and the subject officer, may attempt to so resolve the complaint.

Record of
informal
resolution

(2) Where a complaint is resolved informally, a record shall be made of the manner in which the complaint was resolved and the complainant and the subject officer shall each signify in writing his agreement to such resolution.

Copy of
record to be
furnished

(3) A copy of a record made under subsection (2) shall be furnished forthwith to the Commissioner, the complainant and the subject officer.

Informal
resolution

(4) A complaint may be resolved informally by the person in charge of the Bureau in accordance with the procedures in this section at any time during the course of or after an investigation.

Where
complaint
to continue

(5) Notwithstanding subsection (1), where the Commissioner is of the opinion that the informal resolution was obtained as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue and give reasons therefor in writing to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

(6) The decision of the Commissioner under subsection (5) shall be deemed to be made in the exercise of a statutory power of decision within the meaning of the *Judicial Review Procedure Act*.

Review of
decision

R.S.O. 1980,
c. 224

(7) A complaint may be resolved informally by the Commissioner in accordance with the procedures in this section at any time during the course of an investigation or review by the Commissioner.

Informal
resolution by
Commis-
sioner

(8) No reference shall be made in the personal record of a subject officer to a complaint resolved under this section, except where misconduct has been admitted by the subject officer. 1984, c. 63, s. 10.

No reference
in personal
record of
subject
officer

11.—(1) Where a complaint is not resolved informally, the person in charge of the Bureau shall cause an investigation to be made forthwith into the complaint in accordance with prescribed procedures.

Investigation

(2) The person in charge of the Bureau shall forward to the Commissioner, the complainant and the subject officer an interim report in the prescribed form providing a summary of the investigation to date not later than thirty days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation.

Interim
reports

(3) Notwithstanding subsection (2), the person in charge of the Bureau may decide not to make a report to the complainant or the subject officer where, in his opinion, to do so might adversely affect the investigation of the complaint or where there are no new matters to report, in which case the person in charge of the Bureau shall forthwith notify the Commissioner of the reasons for his decision.

Exception

(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report in the prescribed form to be prepared and shall forward a copy thereof to the Commissioner, the chief of police, the complainant and the subject officer.

Final
report

(5) A final investigation report prepared under subsection (4) shall,

Idem

(a) contain a summary of the complaint and a description of the alleged misconduct by the subject officer;

- (b) contain a summary of the investigation and of information obtained from the complainant, the subject officer and witnesses, if any; and
- (c) contain a description and analysis of any physical evidence obtained.

Further investigation at request of Commissioner

(6) The Commissioner may, upon receipt of a final investigation report, request that the chief of police cause further investigation to be made into the complaint and the results of any such investigation shall be forwarded to the Commissioner. 1984, c. 63, s. 11.

Withdrawal of complaint

12.—(1) All complaints and inquiries shall be dealt with in accordance with this Act, and shall not be withdrawn except in accordance with this Act.

Notice

(2) A complainant may withdraw a complaint at any time by giving notice, in the prescribed form, to the person in charge of the Bureau, who shall forward a copy thereof to the Commissioner and the subject officer.

Where to continue as complaint

(3) Notwithstanding subsection (2), where the Commissioner is of the opinion that the complainant withdrew the complaint as a result of a misunderstanding, a threat or other improper pressure, the Commissioner may notify the person in charge of the Bureau that the complaint shall continue, and give reasons therefor, in writing, to the person in charge of the Bureau, the subject officer, the complainant and the chief of police and in such event the complaint shall continue to be treated as a complaint under this Act.

Review of decision

R.S.O. 1980, c. 224

(4) The decision of the Commissioner to cause the complaint to continue shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Disciplinary action under R.S.O. 1980, c. 381

(5) Notwithstanding subsection (2), where a complaint has been withdrawn by a complainant, such withdrawal shall not prevent the chief of police from taking any disciplinary action that he could otherwise take under the *Police Act* and the regulations thereunder and the chief of police shall notify the Commissioner if any such action is taken and the result thereof. 1984, c. 63, s. 12.

Where complaint not to be dealt with

13.—(1) Where it appears to the chief of police that,

- (a) a complaint is frivolous, vexatious or made in bad faith;

- (b) a complaint is not within the jurisdiction of this Act;
or
- (c) a complaint is one that could or should be more
appropriately dealt with under an Act other than
this Act,

the chief of police may decide that the complaint or any part
thereof not be dealt with under this Act.

(2) The chief of police shall notify the Commissioner, the
complainant and the subject officer of any decision made
under subsection (1). Notice

(3) Notwithstanding subsection (1), the decision of the
chief of police shall not prevent the chief from taking any dis-
ciplinary action that he could otherwise take under the *Police*
Act and the regulations thereunder. Disciplinary
action under
R.S.O. 1980,
c. 381

(4) The complainant may, within thirty days of receiving
notification under subsection (2), request the Commissioner
to review the decision made under subsection (1), in which
case all the provisions of this Act relating to a review by the
Commissioner apply with necessary modifications. Review by
Commis-
sioner

(5) Notwithstanding subsection (4), where the Commis-
sioner is satisfied that there are reasonable grounds for grant-
ing an extension, the Commissioner may extend the time for
requesting a review. 1984, c. 63, s. 13. Extension
of time

14.—(1) The chief of police shall review a final investiga-
tion report and he may order such further investigation as he
considers advisable and may, unless he decides that no action
is warranted, Powers and
duties of
chief of
police

- (a) cause an information alleging the commission of an
offence by the subject officer to be laid and refer
the matter to the Crown attorney for prosecution;
- (b) order that one or more of the allegations contained
in the complaint be heard by a board of inquiry;
- (c) cause disciplinary proceedings to be taken under the
Police Act and the regulations thereunder; and

R.S.O. 1980,
c. 381

- (d) after giving the subject officer ten working days to
reply, either orally or in writing, to the complaint,
counsel or caution the subject officer regarding his
conduct,

but where the chief of police takes action under clause (b), (c) or (d), he shall not take action under any other of those clauses.

Hearing
not stayed

R.S.O. 1980,
c. 381

(2) Where the chief of police causes an information to be laid under clause (1) (a), such action shall not stay any disciplinary proceedings under the *Police Act* or any hearing by a board of inquiry unless the presiding officer or the board, as the case may be, is of the opinion that the hearing should be stayed until the court proceedings have been concluded.

Review by
Commissioner

(3) A subject officer may within thirty days of the taking of any action under clause (1) (d), request the Commissioner to review the action, in which case all the provisions of this Act relating to a review by the Commissioner shall apply with necessary modifications.

Extension
of time

(4) Notwithstanding subsection (3), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review.

Expunging
from
personal
record

(5) Any action taken under clause (1) (d) shall be expunged from the personal record of the subject officer upon the expiration of a period of two years during which no other disciplinary action has been noted on the record.

Notice of
action taken

(6) The chief of police shall give forthwith written notice of any action taken by him under subsection (1) or of his decision that no action is warranted to the Commissioner, the complainant and the subject officer and, where his decision is that no action is warranted or he has taken action under clause (1) (d), the chief of police shall give his reasons therefor.

Designation
by chief
of police

(7) The chief of police may designate any police officer of the rank of inspector or higher to exercise any of his powers and perform any of his duties under this Act and the police officer so designated has the powers and duties set out in the designation and where any power is conditional on the opinion of the chief of police, the requisite opinion shall be that of the police officer so designated. 1984, c. 63, s. 14.

Application
of s. 23
R.S.O. 1980,
c. 381

15.—(1) Where the chief of police has caused disciplinary proceedings to be taken under the *Police Act* and the regulations thereunder, subsections 23 (6), (8), (13), (14) and (15) of this Act apply with necessary modifications to a hearing held in connection with such proceedings.

(2) The chief of police or, if he is not the person who holds a hearing referred to in subsection (1), the person who holds the hearing shall give forthwith written notice of his decision together with his reasons therefor to the Commissioner, the complainant and the subject officer. 1984, c. 63, s. 15.

Notice of
decision

16. Where a hearing referred to in subsection 15 (1) has been held and a penalty has been imposed upon a subject officer, the officer may appeal in accordance with the provisions of this Act and not as provided in the *Police Act* and the regulations thereunder. 1984, c. 63, s. 16.

Police officer
may appeal

R.S.O. 1980,
c. 381

17.—(1) A notice of appeal under section 16 shall be served on the Commissioner and the chief of police within fifteen days after the subject officer receives notice of the penalty imposed, and the Commissioner shall notify the complainant forthwith.

Notice of
appeal

(2) Where a notice of appeal is filed after the time set out in subsection (1), the Commissioner shall assign, in accordance with the regulations, the matter to a member of the panel appointed on a recommendation made under subsection 4 (2) who may, if satisfied that there are reasonable grounds for doing so, extend the time for appealing and give such directions as he considers proper consequent upon the extension. 1984, c. 63, s. 17.

Extension
of time

18.—(1) Notwithstanding any other provision of this Act, the Commissioner may investigate the allegations in the complaint,

Commis-
sioner
may
investigate

(a) at any time after he receives the first interim report under subsection 11 (2) or the thirty-day period mentioned therein has expired;

(b) upon the request of the chief of police; or

(c) where he has reasonable grounds to believe that there has been undue delay or other exceptional circumstances in the conduct of an investigation under section 11.

(2) A decision to take action under clause (1) (c) shall be deemed to be made in the exercise of a statutory power within the meaning of the *Judicial Review Procedure Act*.

Review of
decision

R.S.O. 1980,
c. 224

(3) The Commissioner shall forthwith notify the chief of police in writing of his intention to conduct an investigation under clause (1) (a) or (c) and shall give his reasons therefor in writing.

Notice
to chief
of police

12 Chap. 63 POLICE FORCE COMPLAINTS Sec. 18 (4)

Idem (4) Where the Commissioner conducts an investigation under subsection (1), he shall forward to the complainant, the subject officer, the person in charge of the Bureau and the chief of police an interim report in the prescribed form providing a summary of the investigation to date, not later than thirty days after he has given notification of his intention to conduct an investigation, and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation, and upon the completion of his investigation he shall prepare a final investigation report and forward a copy thereof to the same persons.

Notice of action taken (5) The chief of police, upon receipt of a final investigation report under subsection (4), shall review the report, together with any final investigation report prepared under subsection 11 (4), and shall make a decision in accordance with section 14 and shall notify all persons in accordance with subsection 14 (6).

Delegation (6) The Commissioner may designate any person appointed under subsection 3 (3) to exercise any of his powers and perform any of his duties under this Act, and the person so designated has the powers and the duties set out in the designation, and where any power is conditional upon the opinion of the Commissioner, the requisite opinion shall be that of the designated person. 1984, c. 63, s. 18.

Request for review **19.—**(1) Where a complainant is dissatisfied with the decision made on a disciplinary proceeding arising out of his complaint that is not a decision of a board of inquiry or with action taken by the chief of police under clause 14 (1) (d) or with a decision of the chief of police that no action is warranted, he may within thirty days of receipt of notification under subsection 14 (6) or 15 (2) request the Commissioner to review the matter.

Extension of time (2) Notwithstanding subsection (1), where the Commissioner is satisfied that there are reasonable grounds for granting an extension the Commissioner may extend the time for requesting a review.

Hearing may be ordered (3) Where the Commissioner receives a request under subsection (1), he shall review the matter and may, after such review, order a hearing by a board of inquiry if he believes that, in the public interest, such a hearing is required or he may decide to take no further action.

Notice (4) The Commissioner shall give forthwith written notice to the chief of police, the complainant and the subject officer of

his decision under subsection (3) and, where his decision is to take no further action, shall give his reasons therefor.

(5) Where a subject officer has appealed under section 16 a hearing ordered under subsection (3) shall be heard together with that appeal. 1984, c. 63, s. 19. Where
appeal under
s. 16

20.—(1) For the purposes of an investigation under section 18 or a review under section 19, the Commissioner may, where he has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, after informing the chief of police, enter a police station and examine therein books, papers, documents and things related to the complaint. Powers on
investigation
or review

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation or review as if it were an inquiry under that Act. Powers on
inquiry

R.S.O. 1980,
c. 411

(3) The Commissioner may, in writing, appoint a person to make any investigation or review he is authorized to make and the person so appointed has all the powers and duties of the Commissioner relating to the investigation and the review. Appointment
of person
to make
investigation
or review

(4) The Commissioner shall issue a certificate of appointment to any person appointed to make an investigation or review under subsection (3), which certificate shall contain a photograph of the person appointed, and the person appointed, while exercising any powers or performing any duties in respect of the investigation or review, shall produce the certificate of appointment upon request. Identification

(5) The person appointed to make an investigation or review shall report the results of his investigation or review to the Commissioner. Report

(6) No person shall obstruct the Commissioner or a person appointed by him to make an investigation or review or withhold from him or conceal or destroy any books, papers, documents or things related to the investigation or review. Obstruction

(7) Where a justice of the peace is satisfied upon an *ex parte* application by the Commissioner or by a person appointed by him under subsection (3) that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to an investigation or review, the justice of the peace may issue an order authorizing the person making the application, together with such persons as he calls upon to assist Search
warrant

him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between 6 a.m. and 9 p.m., standard time, unless the justice of the peace, by the order, otherwise authorizes.

Removal of
books, etc.

(8) The Commissioner may, upon giving a receipt therefor, remove any books, papers, documents or things examined under subsection (1) or (7) relating to the investigation or review and shall with reasonable dispatch cause to be made copies of such books, papers or documents and return them promptly thereafter to the person from whom they were removed.

Admissibility
of copies

(9) Any copy made as provided in subsection (8) and certified to be a true copy by the Commissioner is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

Appointment
of experts

(10) The Commissioner may appoint an expert to examine books, papers, documents or things examined under subsection (1) or (7). 1984, c. 63, s. 20.

Report

21.—(1) Where, after making a review, the Commissioner is of the opinion that a police practice or procedure should be altered, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(2) Where, as a result of any matter dealt with under this Act, the Commissioner is of the opinion that a practice or procedure or law affecting the resolution or prevention of public complaints should be altered or implemented, he shall report his opinion and recommendations to the Metropolitan Board of Commissioners of Police, the chief of police and the Metropolitan Toronto Police Association.

Idem

(3) Within ninety days of receiving a report under subsection (1) or (2), the Metropolitan Board of Commissioners of Police shall forward such report along with their comments and any comments submitted to them by the chief of police or the Metropolitan Toronto Police Association, to the Attorney General, the Solicitor General and the Commissioner. 1984, c. 63, s. 21.

Where board
of inquiry to
be
constituted

22.—(1) Where,

- (a) the chief of police has ordered that a matter be heard by a board of inquiry;
- (b) a police officer has appealed under section 16; or
- (c) the Commissioner has, under subsection 19 (3), ordered a hearing,

a board of inquiry shall be constituted in accordance with this section.

(2) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a minor nature, he shall assign, in accordance with the regulations, a member of the panel who was appointed on a recommendation made under subsection 4 (2) to sit alone to conduct the hearing.

Assignment
to board
of inquiry

(3) Where, in the opinion of the Commissioner, the hearing involves misconduct by a subject officer that is of a serious nature, he shall assign, in accordance with the regulations, three members of the panel to conduct the hearing.

Idem

(4) Where, following a disciplinary hearing under the *Police Act* a board of inquiry is to be constituted, the board shall be constituted in accordance with subsection (3).

Constitution
of board
R.S.O. 1980,
c. 381

(5) The chairman of a board of inquiry constituted under subsection (3) or (4) shall be a person appointed to the panel on a recommendation made under subsection 4 (2), one member shall be a person appointed to the panel on a recommendation made under subsection 4 (3) and one member shall be a person appointed to the panel on a recommendation made under subsection 4 (4).

Who shall be
on board

(6) The chief of police, where he has ordered a hearing, and the Commissioner, where he has ordered a hearing, shall provide the parties with a concise statement of the allegations of misconduct to be heard by the board.

Statement
of alleged
misconduct

(7) Where, following a hearing referred to in subsection 15 (1), a board of inquiry has been constituted, the chief of police shall forward the record of that hearing, including the transcript, all documents, evidence and exhibits considered at that hearing, to the board.

Record

(8) Where the Commissioner has ordered the hearing he shall pay the costs of preparing the record. 1984, c. 63, s. 22.

Costs of
record

hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision shall be given unless all members so present participate in the decision.

(11) A decision of a member of a board of inquiry sitting alone and a decision of a majority of the members of a board comprising three members is a decision of the board. Decision

(12) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him within a reasonable time after the matter in issue has been finally determined. Release of documents

(13) Notwithstanding section 12 of the *Statutory Powers Procedure Act*, the subject officer shall not be required to give evidence at the hearing nor shall any statement or answer required to be given by him in respect of the complaint made against him be admitted in evidence at the hearing, except with his consent. Police officer not required to give evidence
R.S.O. 1980, c. 484

(14) Where the person in charge of the Bureau or the Commissioner attempts to resolve a complaint informally and the complaint is not so resolved, any statement or admission made during such attempt by the subject officer or by the complainant shall not be admitted in evidence at the hearing, except with the consent of the subject officer or the complainant, as the case may be. Statement or admission not admissible in evidence

(15) No finding of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt. Proof of misconduct

(16) Where a board constituted under subsection 22 (2) finds the subject officer guilty of misconduct, it may, Imposition of penalty

(a) direct that days off not exceeding five days be forfeited;

(b) direct that pay not exceeding three days pay be forfeited; or

(c) reprimand the police officer.

(17) Where a board constituted under subsection 22 (3) finds the subject officer guilty of misconduct, it may, Idem

(a) dismiss the police officer from the Metropolitan Police Force, whereupon the officer is thereby dismissed;

- (b) direct that the police officer resign from the Metropolitan Police Force and, in default of resigning within seven days, be summarily dismissed;
- (c) reduce the police officer in rank or gradation of rank and in pay in accordance with the rank to which he is reduced;
- (d) direct that days off not exceeding twenty days be forfeited;
- (e) direct that pay not exceeding five days pay be forfeited; or
- (f) reprimand the police officer, which reprimand may be in lieu of or in addition to any other penalty imposed.

Notice of
decision

(18) The board shall give forthwith written notice of its decision and the reasons therefor to the chief of police, the complainant, the subject officer, the Commissioner, the Solicitor General and the Attorney General.

No reference
to hearing

(19) No reference to a hearing conducted by the board shall be made in the personal record of the subject officer unless the board has made a finding of misconduct.

Costs may
be paid

(20) The Metropolitan Board of Commissioners of Police may, in such cases and to such extent as it thinks fit, pay any legal costs incurred by a subject officer in respect of a hearing conducted by a board and an appeal under section 24. 1984, c. 63, s. 23.

Appeal

24.—(1) A party to a hearing by a board may appeal within thirty days of the decision of the board to the Divisional Court.

Solicitor
General and
Attorney
General
entitled to
be heard

(2) The Solicitor General, and the Attorney General where he is not entitled to appeal under subsection (1), are entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

What may
be appealed

(3) An appeal under this section may be made on a question that is not a question of fact alone or from a penalty imposed under subsection 23 (17), or on both the question and the penalty. 1984, c. 63, s. 24.

How notice,
etc., may
be served

25. Any notice, report or other material required to be given, furnished, forwarded or otherwise served under this Act is sufficiently served if delivered personally or sent by

prepaid first class mail addressed to the person on whom service is required to be made at his last known or usual place of abode. 1984, c. 63, s. 25.

26.—(1) Every person engaged in the administration of this Act and the regulations, including a member of the Metropolitan Police Force, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties and shall not communicate any such matter to any other person except,

Matters
confidential

(a) as may be required in connection with the administration of this Act and the regulations or the *Police Act* and the regulations thereunder;

R.S.O. 1980,
c. 381

(b) as may be required for the due enforcement of the law;

(c) to his counsel; or

(d) with the consent of the person to whom the matter relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

Testimony

(3) No record, report, writing or document arising out of a complaint is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder.

What is
inadmissible
in evidence

(4) No oral statement, answer or admission referred to in subsections 23 (13) and (14) is admissible or may be used in evidence in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the *Police Act* and the regulations thereunder. 1984, c. 63, s. 26.

Idem

R.S.O. 1980,
c. 381

27. Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to a board hearing. 1984, c. 63, s. 27.

Application
of 1984,
c. 11, s. 146

28. The *Ombudsman Act* does not apply to anything done under this Act. 1984, c. 63, s. 28.

R.S.O. 1980,
c. 325 does
not apply

20

Chap. 63

POLICE FORCE COMPLAINTS

Sec. 29

Agreement
for
contributions

29. The Attorney General, with the approval of the Lieutenant Governor in Council, and The Municipality of Metropolitan Toronto may enter into an agreement to provide for the payment by the municipality to the Treasurer of Ontario on such terms and conditions as may be agreed upon of contributions in respect of the moneys required for the purposes of this Act. 1984, c. 63, s. 29.

Offence

30. Any person who contravenes subsection 20 (6), subsection 26 (1) or section 27 is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. 1984, c. 63, s. 30.

Regulations

31. The Lieutenant Governor in Council may make regulations,

- (a) respecting the reporting and publication of decisions of boards of inquiry;
- (b) assigning duties to the Commissioner;
- (c) establishing a system that provides for the assignment of panel members on a rotational basis;
- (d) prescribing forms and providing for their use; and
- (e) prescribing any matter that by this Act is required to be or is referred to as prescribed. 1984, c. 63, s. 31.

Advisory
committee

32.—(1) There shall be a committee composed of,

- (a) the Deputy Attorney General;
- (b) the Deputy Solicitor General;
- (c) the chairman of the Ontario Police Commission;
- (d) the Commissioner;
- (e) the Assistant Deputy Attorney General-Criminal Law; and
- (f) such other persons as may be jointly appointed by the Attorney General and the Solicitor General.

Duties

(2) It is the duty of the committee,

- (a) to maintain under review the practice and procedures under this Act;

- (b) to receive and consider matters brought to the attention of the committee by any person having an interest in the operation of the system for handling complaints under this Act;
- (c) to make such recommendations as the committee considers appropriate for the improvement of the system for handling complaints; and
- (d) to perform such other duties or functions as the committee may be requested to perform by the Attorney General or the Solicitor General.

(3) Any recommendations made under clause (2) (c) shall be forwarded by the committee to both the Attorney General and the Solicitor General. 1984, c. 63, s. 32. Recommendations

33. On or before the day that is three years after the day this Act comes into force, the Attorney General shall, after having reviewed the operation of the panel, the Board and the advisory committee referred to in sections 4 and 32 respectively, recommend to the Lieutenant Governor in Council whether those bodies should continue in existence or be terminated. 1984, c. 63, s. 33. Recommendation of Attorney General

Repeal

34.—(1) The *Metropolitan Police Force Complaints Project Act, 1981*, being chapter 43, is repealed.

Proceedings continued under 1981, c. 43

(2) Notwithstanding subsection (1), the *Metropolitan Police Force Complaints Project Act, 1981* shall continue in force and apply to a complaint that is made before the day this Act comes into force, for the purpose of continuing the proceedings in respect of that complaint, but the proceedings at any Board hearing commenced after the day this Act comes into force shall be in accordance with the provisions of this Act.

35. This Act comes into force on the 21st day of December, 1984. Commencement

36. The short title of this Act is the *Metropolitan Toronto Police Force Complaints Act, 1984*. Short title

APPENDIX B

ONTARIO REGULATION 494/85

under the Metropolitan Toronto Police Force Complaints Act, 1984

GENERAL FORMS

1. A complaint shall be recorded in Form 1. O. Reg. 494/85, s. 1.
2. The subject officer shall be informed of the substance of the complaint in Form 1A. O. Reg. 494/85, s. 2.
3. The statement to be furnished under subsection 6 (2) of the Act to the person making the complaint shall be in Form 2. O. Reg. 494/85, s. 3.
4. A record of an informal resolution of a complaint shall be in Form 3. O. Reg. 494/85, s. 4.
5. An interim or final investigation report under subsection 11 (2), 11 (4) or 18 (4) of the Act shall be in Form 4. O. Reg. 494/85, s. 5.
6. A notice of withdrawal of a complaint shall be in Form 5. O. Reg. 494/85, s. 6.

BUREAU INVESTIGATIONS

7. An investigation under section 11 of the Act shall be pursued quickly and diligently and the investigator shall endeavour to obtain all information that may have a bearing on the complaint. O. Reg. 494/85, s. 7.
8. All information and evidence obtained in the investigation shall be recorded and preserved. O. Reg. 494/85, s. 8.
9. The investigator shall endeavour to interview the person making the complaint and the subject officer and to obtain written statements from them. O. Reg. 494/85, s. 9.
10. The investigator shall endeavour to interview the witnesses named by the person making the complaint and the subject officer and witnesses located as a result of the investigation and to obtain written statements from such witnesses. O. Reg. 494/85, s. 10.
11. The investigator shall endeavour to obtain photographs of all personal injuries or damage to property alleged and any other information and evidence that is relevant to the investigation and could only be preserved by way of photographs. O. Reg. 494/85, s. 11.
12. Where appropriate, the investigator shall attend at the scene of the alleged misconduct and obtain any relevant evidence. O. Reg. 494/85, s. 12.

13. The investigator shall endeavour to obtain all hospital records and medical reports related to the complaint. O. Reg. 494/85, s. 13.

14. The investigator shall make notes during or as soon as possible after completion of each investigative step and the notes shall be preserved. O. Reg. 494/85, s. 14.

15. Any information, notes or evidence, except physical evidence, that is required to be preserved under sections 8 and 14 shall be retained for a period of two years after the complaint is finally disposed of. O. Reg. 494/85, s. 15.

ASSIGNMENT OF PANEL MEMBERS

16. The Commissioner shall prepare three lists of names of persons appointed to the panel under subsection 4 (1) of the Act; one consisting of those persons recommended under subsection 4 (2) of the Act; one consisting of those persons recommended under subsection 4 (3) of the Act and one consisting of those persons recommended under subsection 4 (4) of the Act. O. Reg. 494/85, s. 16.

17. For the purposes of sections 17 and 22 of the Act, the Commissioner shall assign, to consider extending time to appeal or to conduct a hearing, as the case may be, the person whose name appears at the beginning of the appropriate list or lists. O. Reg. 494/85, s. 17.

18. The name of a person assigned to conduct a hearing shall, following such assignment, be removed from the beginning of the list and added to the end of the list. O. Reg. 494/85, s. 18.

19. If a person is unable to perform his or her duties or is unable to act within a time determined by the Commissioner to be reasonable, the Commissioner, upon being so informed, shall assign as a replacement the next person on the list, and the name of the person who is so replaced shall remain at the beginning of the list. O. Reg. 494/85, s. 19.

20. If, at any time, a person resigns as a member of the panel, the name of that person shall be deleted from the appropriate list. O. Reg. 494/85, s. 20.

21. If, at any time, a new person is appointed to the panel, the name of that person shall be placed at the end of the appropriate list. O. Reg. 494/85, s. 21.

Schedule

CODE OF OFFENCES

1. Any chief of police, other police officer or constable commits an offence against discipline if he is guilty of,

(a) DISCREDITABLE CONDUCT, that is to say, if he,

- (i) acts in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force,
- (ii) is guilty of oppressive or tyrannical conduct towards an inferior in rank,
- (iii) uses profane, abusive or insulting language to any other member of a police force,
- (iv) wilfully or negligently makes any false complaint or statement against any member of a police force,
- (v) assaults any other member of a police force,
- (vi) withholds or suppresses a complaint or report against a member of a police force,
- (vii) is guilty of an indictable offence or an offence punishable upon summary conviction under the *Criminal Code* (Canada), or
- (viii) contravenes any provision of the *Police Act* or the regulations;

(b) INSUBORDINATION, that is to say, if he,

- (i) is insubordinate by word, act or demeanour, or
- (ii) without lawful excuse, disobeys, omits or neglects to carry out any lawful order;

(c) NEGLIGENCE OF DUTY, that is to say, if he,

- (i) without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force,

(ii) idles or gossips while on duty,

(iii) fails to work in accordance with orders, or leaves an area, detachment, detail or other place of duty, without due permission or sufficient cause,

(iv) by carelessness or neglect permits a prisoner to escape,

(v) fails, when knowing where an offender is to be found, to report him or to make due exertions for bringing him to justice,

(vi) fails to report a matter that it is his duty to report,

(vii) fails to report anything that he knows concerning a criminal or other charge, or fails to disclose any evidence that he, or any person within his knowledge, can give for or against any prisoner or defendant,

(viii) omits to make any necessary entry in any official document or book,

(ix) feigns or exaggerates sickness or injury to evade duty,

(x) is absent without leave from or late for parade, court or any other duty, without reasonable excuse, or

(xi) is improperly dressed, dirty or untidy in person, clothing or equipment while on duty;

(d) DECEIT, that is to say, if he,

(i) knowingly makes or signs a false statement in an official document or book,

(ii) wilfully or negligently makes a false, misleading or inaccurate statement pertaining to official duties, or

(iii) without lawful excuse destroys or mutilates an official document or record or alters or erases an entry therein;

(e) BREACH OF CONFIDENCE, that is to say, if he,

(i) divulges any matter which it is his duty to keep secret,

(ii) gives notice, directly or indirectly, to any person against whom any warrant or summons has been or is about to be issued, except in the

lawful execution of such warrant or service of such summons,

- (iii) without proper authority communicates to the public press or to any unauthorized person any matter connected with the police force,
- (iv) without proper authority shows to any person not a member of the police force or any unauthorized member of the force any book, or written or printed paper, document or report that is the property of the police force,
- (v) makes any anonymous communication to the chief of police or superior officer or authority,
- (vi) canvasses, except as authorized by the Act or the regulations, any person in respect of a matter concerning the police force,
- (vii) signs or circulates a petition or statement in respect to a matter concerning the police force, except through the proper official channel or correspondence or established grievance procedure, or
- (viii) calls or attends any unauthorized meeting to discuss any matter concerning the police force;

(f) CORRUPT PRACTICE, that is to say, if he,

- (i) takes a bribe,
- (ii) fails to account for or to make a prompt, true return of money or property received in an official capacity,
- (iii) directly or indirectly solicits or receives a gratuity, present, pass, subscription or testimonial without the consent of the chief of police,
- (iv) places himself under a pecuniary or other obligation to a licensee concerning the granting or refusing of whose licence a member of the police force may have to report or give evidence,
- (v) improperly use his character and position as a member of the police force for private advantage,
- (vi) in his capacity as a member of the police force writes, signs or gives

without the consent of the Chief of Police, a reference or recommendation to a member or former member of the police force, or any other police force, or

- (vii) without the consent of the chief of police, supports in any way an application for a licence of any kind;

(g) UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY, that is to say, if he,

- (i) without good and sufficient cause makes an unlawful or unnecessary arrest,
- (ii) uses any unnecessary violence to a prisoner or other person contacted in the execution of duty, or
- (iii) is uncivil to a member of the public;

(h) DAMAGE TO CLOTHING OR EQUIPMENT, that is to say, if he,

- (i) wilfully or carelessly causes waste, loss or damage to any article of clothing or equipment, or to any book, document or other property of the police force, or
- (ii) fails to report waste, loss or damage however caused;

(i) CONSUMING INTOXICATING LIQUOR IN A MANNER PREJUDICIAL TO DUTY, that is to say, if he,

- (i) while on duty is unfit for duty through drinking intoxicating liquor, or
- (ii) reports for duty and is unfit for duty through drinking intoxicating liquor, or
- (iii) except with the consent of a superior officer or in the discharge of duty, drinks or receives from any other person intoxicating liquor on duty, or
- (iv) demands, persuades or attempts to persuade another person to give or purchase or obtain for a member of the police force any intoxicating liquor, while on duty;

(j) LENDING MONEY TO A SUPERIOR; OR

(k) BORROWING MONEY FROM OR ACCEPTING A PRESENT FROM ANY INFERIOR IN RANK.

2. Any chief of police, other police officer or constable also commits an offence against discipline and shall be liable to punishment as provided in the regulations, if he connives at, abets or is knowingly an accessory to any offence against discipline under this code. R.R.O. 1980, Reg. 791, Sched.

Bill 107

(Chapter 10
Statutes of Ontario, 1990)

An Act to revise the Police Act and amend the law relating to Police Services

The Hon. S. Offer
Solicitor General

<i>1st Reading</i>	December 20th, 1989
<i>2nd Reading</i>	May 17th, 1990
<i>3rd Reading</i>	June 28th, 1990
<i>Royal Assent</i>	June 28th, 1990

wear or use clothing or equipment that was issued to him or her in that capacity.

(5) If a police officer is convicted of an offence and sentenced to a term of imprisonment, the chief of police may suspend him or her without pay, even if the conviction or sentence is under appeal. Suspension without pay

72.—(1) If a police officer is suspended with pay, the pay for the period of suspension shall be reduced by the amount that he or she earns from other employment during that period. Earnings from other employment

(2) Subsection (1) does not apply to earnings from other employment that was commenced before the period of suspension. Exception

PART VI

PUBLIC COMPLAINTS

73.—(1) In this Part, Definitions

“bureau” means the public complaints investigation bureau of a police force;

“Commissioner” means the Police Complaints Commissioner appointed under section 99.

(2) In this Part, unless the context indicates otherwise, a reference to a police officer is a reference to the police officer who is the subject of a complaint. Police officer

74. This Part shall be administered by the Attorney General. Attorney General

75. Complaints by members of the public about the conduct of police officers shall be dealt with in accordance with this Part. Application of Part

76.—(1) Every chief of police shall establish and maintain a public complaints investigation bureau. Bureau

(2) The chief of police shall ensure that the bureau is supplied with sufficient staff to perform its duties effectively. Staff

(3) If the police force has fewer than twenty police officers, the bureau of another police force may, under an agreement made in accordance with section 7 (municipal agreements for sharing police services) or 10 (municipal agreements for provi- Small police forces

sion of police services by O.P.P.), act as the first-named police force's bureau as well; in that case, subsections (1) and (2) do not apply.

INITIAL HANDLING OF COMPLAINT

Complaint by member of public - 77.—(1) A member of the public may make a complaint about the conduct of a police officer, orally or in writing,

- (a) at the bureau of the police force to which the complaint relates, or at a station or detachment of that police force; or
- (b) at an office of the Commissioner; or
- (c) at any bureau, police station or detachment.

Recording of complaint (2) The person who receives the complaint shall record it on a form provided by the Commissioner and shall give a copy of the completed form to the person who makes the complaint.

Information (3) The person who makes the complaint shall also be given a statement, in a form provided by the Commissioner, that sets out the procedures followed in dealing with a complaint and describes the rights of a complainant.

Preservation of evidence, preliminary investigation (4) The person on duty who is in charge of a place when a complaint is received shall,

- (a) take all reasonable steps to ensure that evidence that might otherwise be lost is secured immediately;
- (b) if he or she considers it appropriate, ensure that a preliminary investigation is conducted immediately; and
- (c) ensure that a report on the evidence and on the preliminary investigation, if any, is forthwith prepared and attached to the complaint.

Copies of complaint (5) The person who records the complaint shall forthwith send copies of it,

- (a) to the bureau, the chief of police and the Commissioner, in the case of a complaint made at a station or detachment of the police force to which it relates;

- (b) to the chief of police and the Commissioner, in the case of a complaint made at the bureau of the police force to which it relates;
- (c) to the bureau and the chief of police of the police force to which it relates, in the case of a complaint made at an office of the Commissioner;
- (d) to the Commissioner, in the case of a complaint made at a bureau, station or detachment of a different police force than the one to which it relates.

(6) If a complaint was made at a bureau, station or detachment of a different police force than the one to which it relates, the Commissioner shall forthwith send copies of the complaint and of any report prepared under subsection (4) to the appropriate bureau.

Complaint made to another police force

(7) A complaint that is made more than six months after the incident to which it relates shall be further dealt with under this Part only if the Commissioner so directs.

Complaint made more than six months after incident

78.—(1) In exceptional circumstances, the Attorney General may direct the Commissioner to make a complaint about the conduct of a police officer.

Complaint by Commissioner

(2) The Commissioner shall cause the complaint to be recorded and shall send copies to the bureau and the chief of police of the force to which it relates.

Recording of complaint, copies

(3) The Commissioner is the complainant in the case of a complaint made under this section.

Complainant

(4) Subsection 77 (7) and sections 80 (notice to potential complainant), 81 (classification of complaint), 82 (reclassification), 83 (informal resolution) and 85 (decision by chief of police re no further action) do not apply to complaints made under this section.

Non-application of certain provisions

79.—(1) When the bureau receives a complaint, the person in charge shall forthwith give the police officer notice of the substance of the complaint, unless in the person's opinion to do so might prejudice the investigation.

Notice to police officer

(2) The notice shall be written on a form provided by the Commissioner.

Form

80.—(1) If the complaint is made by a person who was not directly affected by the incident and did not observe it, the Commissioner shall, as soon as possible after receiving the

Notice to potential complainant

complaint, attempt to find the person who was directly affected by the incident or who observed it and send him or her a notice.

Idem

(2) The notice shall indicate that a complaint has been made, that the person is entitled to be the complainant in the matter and that the complaint will not be dealt with further unless he or she is the complainant.

Idem

(3) The notice shall also include information about the procedures followed in dealing with a complaint and the rights of a complainant.

No further action

(4) The complaint shall not be further dealt with under this Part if,

(a) no person who was directly affected by the incident or who observed it can be found; or

(b) the person to whom the Commissioner sends the notice does not, within thirty days of the date on which it is sent, file with the Commissioner a request to be the complainant in the matter.

Disciplinary proceeding

(5) However, if a disciplinary proceeding is commenced against the police officer in respect of the complaint, the chief of police shall notify the Commissioner of the proceeding and of its result, and the Commissioner shall then notify the person who made the complaint.

Reopening of matter

(6) If the person to whom the Commissioner sends the notice files a request to be the complainant in the matter after the thirty-day period referred to in subsection (4), the Commissioner may cause the matter to be reopened despite the late filing if he or she considers it advisable to do so.

Classification of complaint

81.—(1) When the bureau receives a complaint, the person in charge shall consider whether it relates to possible misconduct under section 56, to other matters or to both.

Idem

(2) If the person in charge is of the opinion that all or part of the complaint relates only to other matters than possible misconduct, he or she may, with the Commissioner's consent, classify the complaint or part as an inquiry.

Notice and investigation

(3) When all or part of a complaint has been classified as an inquiry, the person in charge shall forthwith notify the complainant and the police officer of the fact and may cause the inquiry to be investigated.

(4) Not more than sixty days after the bureau receives the original complaint, the person in charge shall send the complainant a written response to the inquiry and shall also send the Commissioner a copy of the response, together with a summary of the results of any investigation.

Response to complainant

(5) A complaint or part of a complaint that is classified as an inquiry and not reclassified as a complaint and that is the subject of a response under this section need not be dealt with further under this Part.

Effect

82.—(1) During the course of the investigation of an inquiry, if the person in charge concludes that all or part of it relates to possible misconduct, he or she may reclassify the inquiry or part as a complaint.

Reclassification

(2) After receiving a summary of the results of the investigation of an inquiry, the Commissioner may direct the person in charge to reclassify all or part of it as a complaint.

Idem

(3) The person in charge shall forthwith notify the complainant and the police officer of the reclassification, and shall also notify the Commissioner in the case of a reclassification under subsection (1).

Notice

(4) An inquiry or part of an inquiry that is reclassified as a complaint shall be dealt with as such under this Part.

Effect

INFORMAL RESOLUTION, WITHDRAWAL

83.—(1) If the complainant and the police officer consent, the complaint may be resolved informally by the person in charge of the bureau, before the chief of police gives notice of a decision under section 90, or by the Commissioner after that time.

Informal resolution by person in charge of bureau

(2) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, its consent is also required for an informal resolution.

Board's consent

(3) When a complaint is resolved informally, the resolution shall be recorded on a form provided by the Commissioner and signed by the complainant and police officer.

Record

(4) Copies of the record shall be provided to the complainant and the police officer, and to the Commissioner if the complaint was resolved by the person in charge of the bureau.

Copies

(5) If the Commissioner is of the opinion that the informal resolution is the result of a misunderstanding or a threat or

Commissioner's decision that complaint to continue

other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the informal resolution.

Notice

(6) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

Withdrawal
of complaint

84.—(1) The complainant may withdraw the complaint by giving a notice of withdrawal to the person in charge of the bureau, before the chief of police gives notice of a decision under section 90, or to the Commissioner after that time.

Idem.
complaint
made by
Commissioner

(2) If the complaint was made under section 78, the Commissioner may withdraw it by giving a notice of withdrawal to the chief of police and a copy to the police officer; subsection (3) applies to the withdrawal but subsections (4) to (7) do not.

Board's
consent

(3) If a board of inquiry has begun to hear evidence or argument in respect of the complaint, it shall not be withdrawn without the board's consent.

Copies

(4) A copy of the notice of withdrawal shall be provided to the police officer, and to the Commissioner if the person in charge of the bureau received the notice.

Form

(5) The notice of withdrawal shall be written on a form provided by the Commissioner.

Commissioner's
decision that
complaint to
continue

(6) If the Commissioner is of the opinion that the withdrawal is the result of a misunderstanding or a threat or other improper pressure, he or she may decide that the complaint shall continue to be dealt with under this Part despite the withdrawal.

Notice

(7) The Commissioner shall give notice of the decision, with reasons, to the complainant, the police officer, the chief of police and the person in charge of the bureau.

POWERS OF CHIEF OF POLICE

Decision re
no further
action

85.—(1) At any time before making a decision under section 90, the chief of police may decide that the complaint or part of it shall not be further dealt with under this Part, if he or she is of the opinion that the complaint or part is frivolous or vexatious or was made in bad faith.

Notice

(2) The chief of police shall give the Commissioner, the complainant and the police officer notice of the decision.

86.—(1) The chief of police may commence or continue a disciplinary proceeding against a police officer under Part V even if,

Power to commence or continue disciplinary proceeding

- (a) the complaint is withdrawn or is resolved informally; or
- (b) the complaint is not to be further dealt with under this Part because of subsection 77 (7) (complaint filed more than six months after incident) or section 80 (complaint made by person not directly affected), or because of a decision by the chief of police under section 85.

(2) The chief of police shall give the Commissioner and the complainant notice of a decision to commence or continue a disciplinary proceeding in the circumstances described in subsection (1), and shall also give them notice of the results of the proceeding.

Notice to Commissioner and complainant

INVESTIGATION OF COMPLAINT

87.—(1) The person in charge of the bureau shall cause an investigation to be conducted into the complaint in accordance with the prescribed procedures.

Investigation

(2) During the course of the investigation, the person in charge shall send the Commissioner, the complainant and the police officer interim reports on the investigation at monthly intervals.

Interim reports

(3) The first interim report shall be sent not more than thirty days after the bureau receives the complaint.

Idem

(4) If there are no new matters to report, the person in charge may send the Commissioner, the complainant and the police officer a notice to that effect instead of an interim report.

Exception

(5) The person in charge may withhold an interim report from the complainant or the police officer if, in his or her opinion, it is desirable to do so in order to avoid prejudicing the investigation, but in that case shall forthwith notify the Commissioner of the decision and the reasons for it.

Idem

(6) When the investigation has been completed, the person in charge shall cause a final report to be prepared and shall send copies of it to the Commissioner, the chief of police, the complainant and the police officer.

Final report

Contents

(7) The final report shall contain,

- (a) a summary of the complaint, including a description of the police officer's alleged misconduct;
- (b) a summary of the investigation, including summaries of the information obtained from the complainant, the police officer and any witnesses; and
- (c) a description and analysis of any physical evidence obtained.

Further investigation

(8) After receiving a final report, the Commissioner may require the chief of police to have the complaint investigated further.

Idem

(9) A summary of the results of any further investigation shall be sent to the persons who received the final report.

Forms

(10) The interim reports and final report shall be written on forms provided by the Commissioner.

Investigation by Commissioner

88.—(1) The Commissioner may conduct the investigation into the complaint, instead of the bureau,

- (a) for any reason, after receiving the first interim report or after the thirty-day period referred to in subsection 87 (3) has expired;
- (b) if the complainant has commenced a court proceeding against the police officer, the police force or the chief of police, the police services board or the municipality (in the case of a municipal police force) or the Crown in right of Ontario (in the case of the Ontario Provincial Police) in connection with the incident to which the complaint relates;
- (c) if the Commissioner has reasonable grounds to believe that undue delay or other unusual circumstances have affected the bureau's investigation or the preparation of its final report; or
- (d) if the chief of police requests that the Commissioner conduct the investigation.

Duty of chief of police

(2) The chief of police, if he or she becomes aware that the complainant has commenced a court proceeding of the kind described in clause (1) (b), shall forthwith notify the Commissioner of the fact.

(3) If the complaint concerns more than one police force, the Commissioner shall conduct the investigation.

Complaints
concerning
more than
one police
force

(4) When the Commissioner decides to conduct the investigation, he or she shall forthwith notify the chief of police, giving reasons in the case of a decision under clause (1) (a) or (c).

Notice

(5) When the Commissioner notifies the chief of police of a decision to conduct the investigation, the person in charge of the bureau shall forthwith end any investigation begun by the bureau and send to the Commissioner the evidence that has been gathered and the documents relating to the complaint.

Effect on
bureau

(6) Section 87 applies to the Commissioner's investigation, with necessary modifications, except that the Commissioner shall send the first interim report not more than thirty days after giving notice of the decision to conduct the investigation.

Manner of
conducting
investigation

89.—(1) If the complaint was made under section 78, the Commissioner shall conduct the investigation in accordance with the prescribed procedures, and section 87 does not apply.

Investigation
of complaint
made by
Commis-
sioner

(2) The Commissioner shall send the police officer and the chief of police interim reports on the investigation at monthly intervals.

Interim
reports

(3) The first interim report shall be sent not more than thirty days after the Commissioner makes the complaint.

Idem

(4) If there are no new matters to report, the Commissioner may send the police officer and the chief of police a notice to that effect instead of an interim report.

Exception

(5) The Commissioner may withhold an interim report from the police officer if, in his or her opinion, it is desirable to do so to avoid prejudicing the investigation, but in that case shall forthwith notify the chief of police of the decision and the reasons for it.

Idem

(6) When the investigation has been completed, the Commissioner shall cause a final report to be prepared and shall send copies of it to the chief of police and the police officer.

Final report

(7) The final report shall contain,

Contents

(a) a summary of the complaint, including a description of the police officer's alleged misconduct;

- (b) a summary of the investigation, including summaries of the information obtained from the police officer and any witnesses; and
- (c) a description and analysis of any physical evidence obtained.

DECISION BY CHIEF OF POLICE

Review of
final report

90.—(1) The chief of police shall review the final report of the investigation of a complaint and may order further investigation if he or she considers it advisable.

Results of
further
investigation

(2) A summary of the results of any further investigation shall be sent to the persons who received the final report, and to the Commissioner if he or she conducted the original investigation.

Decision

(3) After reviewing the final report and the results of any further investigation, the chief of police shall,

- (a) decide that no further action is necessary;
- (b) admonish the police officer regarding the matter in accordance with subsection 59 (1);
- (c) hold a disciplinary hearing under section 60;
- (d) order that all or part of the complaint be the subject of a hearing by a board of inquiry; or
- (e) cause an information to be laid against the police officer and refer the matter to the Crown Attorney for prosecution.

Idem

(4) If the chief of police decides to hold a disciplinary hearing under section 60 or orders a hearing by a board of inquiry, he or she may at the same time cause an information to be laid against the police officer.

Notice

(5) The chief of police shall give written notice of the decision to the Commissioner, the complainant and the police officer, with reasons in the case of a decision that no further action is necessary or a decision to admonish the police officer.

Idem

(6) If the chief of police orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 103 (9).

(7) The chief of police shall give notice of the decision within six months of receiving the final report, unless the Commissioner grants an extension. Six-month
time limit

(8) If the chief of police does not give notice of the decision within the six-month period and is not granted an extension, he or she shall be deemed to have decided that no further action is necessary. Deemed
decision

REVIEW BY COMMISSIONER

91.—(1) The Commissioner shall review the decision of the chief of police, Review by
Commis-
sioner

- (a) at the complainant's or police officer's request, in the case of a decision under section 90 to admonish the police officer;
- (b) at the complainant's request, in the case of a decision under section 90 that no further action is necessary;
- (c) at the complainant's request, in the case of a decision under section 85 that the complaint or part of it not be further dealt with under this Part.

(2) The Commissioner may, if in his or her opinion it is in the public interest to do so, review the decision of the chief of police, Idem

- (a) in the case of a decision under section 90 to admonish the police officer;
- (b) in the case of a decision under section 90 that no further action is necessary;
- (c) in the case of a decision under section 85 that the complaint or part of it not be further dealt with under this Part.

(3) The Commissioner shall, at the complainant's request, review the decision made in a disciplinary hearing under section 60 arising out of a complaint. Idem

(4) The complainant or police officer may request a review by the Commissioner only within thirty days of receiving notice of the decision, unless the Commissioner grants an extension. Thirty-day
limit

Complaint
made by
Commis-
sioner

(5) In the case of a complaint made under section 78, the Commissioner may review,

- (a) a decision by the chief of police to admonish the police officer;
- (b) a decision by the chief of police that no further action is necessary;
- (c) the decision made in a disciplinary hearing under section 60 arising out of the complaint.

Commis-
sioner's
decision

(6) After conducting the review, the Commissioner may decide to take no further action, or may order a hearing by a board of inquiry if he or she believes it to be necessary in the public interest.

Notice

(7) The Commissioner shall forthwith give written notice of his or her decision, with reasons in the case of a decision to take no further action, to the chief of police, the complainant and the police officer.

Idem

(8) If the Commissioner orders a hearing by a board of inquiry, he or she shall also notify the chair appointed under subsection 103 (9).

HEARING BY BOARD OF INQUIRY

Police
officer's
appeal to
board

92.—(1) If a penalty is imposed on a police officer after a disciplinary hearing under section 60 that was conducted as a result of the complaint, he or she may appeal to a board of inquiry by serving a notice of appeal on the Commissioner, the chair of the panel and the chief of police within fifteen days of receiving notice of the decision.

Notice to
complainant

(2) The Commissioner shall forthwith notify the complainant of the appeal.

Extension of
time for
appeal

(3) A member of the panel who was appointed on a recommendation made under subsection 103 (2) may grant an extension of the time provided for serving a notice of appeal, before or after the expiry of the time, and may give directions in connection with the extension.

Appeal to be
combined
with other
hearing

(4) The hearing of the police officer's appeal and any hearing ordered by the Commissioner under section 91 shall be combined.

Constitution
of board

93.—(1) A board of inquiry shall be constituted,

- (a) when the chief of police orders under section 90 that a matter be heard by a board of inquiry;
- (b) when the Commissioner orders a hearing under section 91; and
- (c) when a police officer appeals under section 92.

(2) The chair of the panel shall assign the following members of the panel to the board of inquiry, choosing members from the area where the complaint arose if possible:

Assignment
of members
to board

- 1. As presiding officer, a member who was appointed on a recommendation made under subsection 103 (2).
- 2. A member who was appointed on a recommendation made under subsection 103 (3).
- 3. A member who was appointed on a recommendation made under subsection 103 (4).

(3) In the case of a complaint against a chief of police, the board of inquiry shall include, instead of a member of the panel who was appointed on a recommendation made under subsection 103 (3), a person, other than a police officer or a member of the Law Society of Upper Canada, appointed to the board of inquiry by the chair of the panel on the recommendation of the Ontario Association of Chiefs of Police.

Complaint
against chief
of police

94.—(1) The hearing before the board of inquiry shall be a new hearing, unless it follows a disciplinary hearing under section 60; in that case it shall be on the record, but the board may receive new or additional evidence as it considers just.

New hearing,
exception

(2) If a board is constituted following a disciplinary hearing, the chief of police shall cause a record of the hearing to be prepared, at the Commissioner's expense if the Commissioner ordered the hearing before the board.

Record of
disciplinary
hearing

(3) The record shall include a transcript and shall be accompanied by the documents, physical evidence and exhibits considered at the disciplinary hearing.

Idem

95.—(1) The parties to a hearing are,

Parties

- (a) the complainant;
- (b) the police officer;

(c) the Commissioner; and

(d) the chief of police, in the case of an appeal by the police officer.

Idem (2) The board of inquiry may add parties at any stage of the hearing on the conditions it considers proper.

Carriage (3) In the case of a hearing ordered by the chief of police or by the Commissioner, the Commissioner has carriage of the matter and, in the case of an appeal by the police officer, the police officer has carriage.

Statement of alleged misconduct (4) In the case of a hearing ordered by the chief of police or by the Commissioner, the chief of police or the Commissioner, as the case may be, shall provide the parties with a concise statement of the allegations of misconduct to be heard.

Notice of hearing 96.—(1) The board of inquiry shall appoint a time for the hearing and notify the parties.

Examination of evidence (2) Before the hearing, the police officer and the complainant shall be given an opportunity to examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence at the hearing.

Recording of evidence (3) The oral evidence given at the hearing shall be recorded and copies or transcripts shall be provided on the same terms as in the Supreme Court of Ontario.

Application of 1984, c. 11, s. 146 (4) Section 146 of the *Courts of Justice Act, 1984* (photography at court hearing) applies with necessary modifications to the hearing.

Police officer not required to give evidence R.S.O. 1980, c. 484 (5) Despite section 12 of the *Statutory Powers Procedure Act*, the police officer shall not be required to give evidence at the hearing.

Limited admissibility of certain statements (6) No statement made by the police officer or complainant in the course of an attempt to resolve the complaint informally shall be admitted in evidence at the hearing, except with the consent of the person who made the statement.

Board not to communicate in relation to subject-matter of hearing (7) The board of inquiry shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party or party's counsel or representative, unless all parties receive notice and have an opportunity to participate.

(8) However, the board may seek legal advice from an adviser independent of the parties, and in that case the nature of the advice shall be communicated to the parties so that they may make submissions as to the law.

Exception

(9) If it appears to be in the interests of justice, the board may direct that the board, the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the hearing for that purpose.

Adjournment
for view

(10) Within a reasonable time after the matter has been finally determined, documents and things put in evidence at the hearing shall, on request, be released to the person who produced them.

Release of
exhibits

(11) If the police officer is charged with an offence under a law of Canada or of a province or territory in connection with the misconduct or possible misconduct to which the complaint relates, the hearing shall continue unless the Crown Attorney advises the presiding officer that it should be stayed until the conclusion of the court proceedings.

Stay

(12) No member of the board shall participate in a decision unless he or she was present throughout the hearing and heard the parties' evidence and argument; except with the parties' consent, no decision shall be given unless all the members so present participate in it.

Only
members at
hearing to
participate in
decision

(13) The decision of a majority of the members of the board is the board's decision.

Decision

97.—(1) If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may make submissions as to penalty and the board of inquiry may,

Penalties

- (a) dismiss the police officer from the police force;
- (b) direct that the police officer be dismissed in seven days unless he or she resigns before that time;
- (c) demote the police officer, specifying the manner and period of the demotion;
- (d) suspend the police officer without pay for a period not exceeding thirty days or 240 hours, as the case may be;
- (e) direct that the police officer forfeit not more than five days' or forty hours' pay, as the case may be; or

- (f) direct that the police officer forfeit not more than twenty days or 160 hours off, as the case may be.

Calculation

- (2) Penalties imposed under clauses (1) (d), (e) and (f) shall be calculated in terms of days if the police officer normally works eight hours a day or less and in terms of hours if he or she normally works more than eight hours a day.

Idem

- (3) Instead of or in addition to a penalty described in subsection (1), the board may reprimand the police officer.

Notice of decision

- (4) The board shall promptly give written notice of the decision, with reasons, to the parties and the Attorney General.

Appeal to Divisional Court

- 98.**—(1) A party to a hearing before a board of inquiry may appeal to the Divisional Court within thirty days of receiving notice of the board's decision.

Grounds for appeal

- (2) An appeal may be made on a question that is not a question of fact alone, or from a penalty, or both.

Attorney General

- (3) The Attorney General is entitled to be heard, by counsel or otherwise, on the argument of the appeal.

POLICE COMPLAINTS COMMISSIONER

Appointment of Commissioner

- 99.**—(1) The Lieutenant Governor in Council shall appoint a Police Complaints Commissioner, to hold office for a term not exceeding five years.

Reappointment

- (2) The Commissioner may be reappointed for a further term or terms not exceeding five years in each case.

Staff

R.S.O. 1980, c. 418

- (3) Such employees as are considered necessary for the purposes of this Part may be appointed under the *Public Service Act*.

Remuneration

- (4) The Commissioner shall be paid such remuneration and allowance for expenses as may be fixed by the Lieutenant Governor in Council.

Records

- (5) The Commissioner shall maintain copies of all records, reports and other materials received under this Part.

Monitoring handling of complaints

- (6) The Commissioner shall monitor the handling of complaints by bureaus and chiefs of police.

Local offices

- (7) The Commissioner may establish local offices.

(8) Anything that is given to or served upon the Commissioner under this Part may be given or served at one of the local offices. Idem

(9) The Commissioner shall report annually to the Attorney General. Annual report

(10) The Commissioner's accounts shall be audited annually by the Provincial Auditor. Audit

100.—(1) For the purposes of an investigation under section 88 or 89 or a review under section 91, the Commissioner may, if he or she has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation or review, enter a police station after informing the chief of police and examine there documents and things related to the complaint. Powers on investigation or review

(2) For the purposes of an investigation or review, the Commissioner has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation or review as if it were an inquiry under that Act. Powers on inquiry
R.S.O. 1980, c. 411

(3) The Commissioner may, in writing, appoint a person to make any investigation or review the Commissioner is authorized to make and the person has all the powers and duties of the Commissioner relating to the investigation and the review. Appointment of person to make investigation or review

(4) The person shall be provided with a certificate of appointment containing his or her photograph, and while exercising any powers or performing any duties in respect of the investigation or review shall produce the certificate of appointment upon request. Identification

(5) The person shall report the results of the investigation or review to the Commissioner. Report

(6) No person shall obstruct the Commissioner or a person appointed under subsection (3) or withhold from the Commissioner or person or conceal or destroy any documents or things related to the investigation or review. Obstruction

(7) If a justice of the peace is satisfied, on an application made without notice by the Commissioner or a person appointed under subsection (3), that there are reasonable grounds to believe that there are in any place documents or things relating to an investigation or review, the justice of the peace may make an order authorizing the applicant, together with such persons as he or she calls on for assistance, to enter Search warrant

the place, by force if necessary, search for the documents or things and examine them.

Entry and
search at
night
restricted

(8) The entry and search shall not be made between the hours of 9 p.m. and 6 a.m. unless the order so authorizes.

Removal of
books, etc.

(9) The Commissioner may, upon giving a receipt, remove any documents or things examined under subsection (1) or (7) relating to the investigation or review, shall cause them to be copied with reasonable dispatch and shall then return them promptly to the person from whom they were removed.

Admissibility
of copies

(10) A copy made as provided in subsection (9) and certified to be a true copy by the Commissioner is admissible in evidence in any proceeding and is proof, in the absence of evidence to the contrary, of the original document and its contents.

Appointment
of expert

(11) The Commissioner may appoint an expert to examine documents or things examined under subsection (1) or (7).

Recommendations
concerning
police
practices or
procedures

101.—(1) The Commissioner may make recommendations with respect to the practices or procedures of a police force by sending the recommendations, with any supporting documents, to,

- (a) the Attorney General;
- (b) the Solicitor General;
- (c) the chief of police;
- (d) the association, if any; and
- (e) the police services board, in the case of a municipal police force.

Comments

(2) Within ninety days of receiving the recommendations, the chief of police, association and police services board shall send their comments to the Attorney General, the Solicitor General and the Commissioner.

Judicial
review of
Commissioner's
decisions

102. The Commissioner's decisions under subsection 83 (5) (complaint to continue to be dealt with despite informal resolution), subsection 84 (6) (complaint to continue to be dealt with despite withdrawal) and clause 88 (1) (c) (decision to conduct investigation because of undue delay) shall be deemed to be made in the exercise of a statutory power of decision.

BOARDS OF INQUIRY

103.—(1) The Lieutenant Governor in Council shall appoint a panel of persons to act as members of boards of inquiry to conduct hearings in connection with complaints.

Panel for
boards of
inquiry

(2) One-third of the members of the panel shall be members of the Law Society of Upper Canada who are recommended for appointment by the Attorney General.

Recommendations for
appointment

(3) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Police Association of Ontario.

Idem

(4) One-third of the members of the panel shall be persons, other than police officers and members of the Law Society of Upper Canada, who are recommended for appointment by the Association of Municipalities of Ontario.

Idem

(5) The Attorney General may make the recommendations under subsection (3) or (4) if the Police Association of Ontario or the Association of Municipalities of Ontario, as the case may be, do not submit written recommendations to the Attorney General within the time that he or she specifies.

Failure to
make
recommendations

(6) Appointments to the panel shall be for a term not exceeding three years and a member may be reappointed for a further term or terms.

Term

(7) A member of the panel whose term expires without reappointment continues in office for the purpose of completing the work of a board to which he or she was assigned before the expiration of the term.

Continuance
in office for
uncompleted
assignments

(8) The members of the panel shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Remuneration

(9) The Lieutenant Governor in Council shall appoint a person to be the chair of the panel.

Chair

(10) The chair shall cause to be prepared and published an annual summary of the decisions of boards, with reasons.

Annual
summary of
decisions

GENERAL MATTERS

104. No reference to a complaint, a hearing held under this Part or a disciplinary hearing conducted under section 60 as a result of the complaint shall be made in the police officer's employment record.

Police
officer's
employment
record

cer's employment record, and the matter shall not be taken into account for any purpose related to his or her employment, unless,

- (a) the police officer is convicted of an offence in connection with the incident;
- (b) misconduct is proved on clear and convincing evidence at a hearing held under this Part or at a disciplinary hearing;
- (c) the chief of police admonishes the police officer in connection with the incident, in accordance with subsection 59 (1);
- (d) the police officer admits misconduct in the course of attempts to resolve the complaint informally; or
- (e) the police officer resigns before the complaint is finally disposed of.

Resignation
after hearing
ordered

105.—(1) This section applies to a police officer who resigns from the police force after a hearing is ordered under section 90 or 91.

Idem

(2) If the police officer resigns before a board of inquiry is constituted under section 93, the following rules apply:

1. No board of inquiry shall be constituted unless the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force.
2. In that case, the board acquires jurisdiction over the police officer despite the earlier resignation.

Idem

(3) If the police officer resigns after a board of inquiry is constituted, the following rules apply:

1. The board of inquiry loses jurisdiction over the police officer.
2. If the police officer, within twelve months of the resignation, applies for employment with a police force or is employed by a police force, the board's jurisdiction is revived.

Notice

106.—(1) A notice or other document required to be given or sent under this Part is sufficiently given if delivered

personally or sent by prepaid registered mail addressed to the person.

(2) Notice that is given by mail shall be deemed to be given on the fifth day after the day of mailing, unless the person to whom the notice is to be given establishes that he or she, acting in good faith, through absence, accident, illness or other cause beyond his or her control failed to receive the notice until a later date.

Notice by
mail

107.—(1) The chief of police may authorize any police officer of the rank of inspector or higher (from another police force if there is none in the chief's own police force) to exercise any power or perform any duty of the chief of police referred to in this Part.

Delegation
by chief of
police

(2) The Commissioner may authorize any member of his or her staff to exercise any power or perform any duty of the Commissioner referred to in this Part.

Delegation
by Commis-
sioner

108.—(1) This section applies to every person engaged in the administration of this Part, including a member of a police force.

Application
of section

(2) A person shall preserve secrecy in respect of all information obtained in the course of his or her duties and not contained in a record as defined in the *Freedom of Information and Protection of Privacy Act, 1987*, and shall not communicate such information to any other person except,

Confiden-
tiality,
exceptions
1987, c. 25

- (a) in accordance with subsection (3);
- (b) as may be required for law enforcement purposes;
or
- (c) with the consent of the person, if any, to whom the information relates.

(3) A person may communicate information obtained in the course of his or her duties,

Permitted
disclosure

- (a) as may be required in connection with the administration of this Act and the regulations; or
- (b) to his or her counsel.

(4) No person shall be required to testify in a civil proceeding with regard to information obtained in the course of his or her duties, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Non-
compellability

Inadmissi-
bility of
documents

(5) No document prepared under this Part as the result of a complaint and no statement referred to in subsection 96 (6) (statements made during attempt at informal resolution) is admissible in a civil proceeding, except at a hearing held under this Part or at a disciplinary hearing held under Part V.

Non-
application of
R.S.O. 1980,
c. 325

109. The *Ombudsman Act* does not apply to anything done under this Part.

Agreement
for contri-
butions

110. The Attorney General may, with the approval of the Lieutenant Governor in Council, enter into an agreement with a municipality providing for its payment to the Treasurer of Ontario, on such conditions as may be agreed upon, of contributions in respect of the amounts required for the purposes of this Part.

Offence

111. A person who contravenes subsection 96 (4) (photography at hearing), 100 (6) (obstructing Commissioner) or 108 (2) (confidentiality) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

Definition
1984, c. 63

112.—(1) In subsection (2), "former Act" means the *Metropolitan Toronto Police Force Complaints Act, 1984*.

Transition,
complaints
under former
Act

(2) Despite the repeal of the former Act by subsection 148 (1), complaints made under the former Act before the day this Act comes into force shall be dealt with in accordance with the former Act, except that hearings before boards of inquiry that are constituted after the day this Act comes into force shall be conducted in accordance with this Part.

PART VII

SPECIAL INVESTIGATIONS

Special
investigations
unit

113.—(1) There shall be a special investigations unit of the Ministry of the Solicitor General.

Composition

(2) The unit shall consist of a director appointed by the Lieutenant Governor in Council on the recommendation of the Solicitor General and investigators appointed under the *Public Service Act*.

R.S.O. 1980,
c. 418

Idem

(3) A person who is a police officer or former police officer shall not be appointed as director, and persons who are police officers shall not be appointed as investigators.

Peace officers

(4) The director and investigators are peace officers.



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